

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ILLINOIS
EASTERN DIVISION

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IN RE: ABBOTT LABORATORIES,

*

ET AL., PRETERM INFANT

* MDL No. 3026

NUTRITION PRODUCTS LIABILITY

*

LITIGATION

* Master Docket No:

* 1:22-cv-00071

*

This Document Relates to:

* Hon. Rebecca R.

* Pallmeyer
Mar v. Abbott Laboratories, *
Case No. 1:22-CV-00232 *
*
*

VIDEOCONFERENCE DEPOSITION OF NAOMI BAR-YAM,

Deposition taken with all parties appearing remotely
on Thursday, May 1, 2025, commencing at 10:07 a.m.
EST.

Court Reporter:
Pamela J. Carle, LCR, RPR, CRR

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Also Present:

Sarah Papantonio, Esq.

Meeting Technician:

Jeremy Young

15 Responses to subpoena for documents 87
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Northeast Milk Bank's responses to
discovery

(Exhibits retained by Attorney Esfandiarifard.)

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1 NAOMI BAR-YAM,
2 having been duly sworn,
3 was deposed and testified
4 as follows:

5 MS. ESFANDIARIFARD: For appearances
6 for the record, this is Saghar Esfandiarifard from
7 Kirkland & Ellis on behalf of Abbott Laboratories,
8 and I'm joined by my colleague, Ms. Rebecca
9 Fitzpatrick.

10 MR. ROJAS: Good morning, this is Jose
11 Rojas with the plaintiff.

12 MS. ESFANDIARIFARD: And I think we
13 have Ms. Sarah Papantonio.

14 MR. ROJAS: Yeah, it looks like we have
15 Sarah Papantonio for the plaintiff, Jaclyn Paride
16 for the plaintiff, and with me I actually have
17 Hannah Terrapin for the plaintiff.

18 MS. ESFANDIARIFARD: And just for the
19 record, Mr. Rojas, is Hannah in the room? Because
20 I don't see her --

21 MR. ROJAS: Hannah is in the room.

22 EXAMINATION

23 BY MS. ESFANDIARIFARD:

24 Q. Good morning, Doctor Bar-Yam. Is that
25 the correct way to address you? I understand you

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1 have a Ph.D.

2 A. I do.

3 Q. Good morning, Doctor Bar-Yam, my name
4 is Saghar Esfandiarifard. I have a rather
5 difficult name, so throughout the day if you'd
6 like to call me Saghar, I will take no offense to
7 that. Thank you for joining us this morning.

8 We had the pleasure of speaking on one
9 occasion briefly over the phone April 10th and
10 then via e-mail to schedule this deposition.
11 Apart from those two instances we've never spoken,
12 correct, Doctor?

13 A. Correct.

14 Q. And this is the first time I've had the
15 pleasure to see you face-to-face, although
16 remotely, true?

17 A. Yes.

18 Q. Is plaintiff's counsel, Mr. Rojas, or
19 anyone else on behalf of plaintiff representing
20 you today?

21 A. No.

22 Q. Do you have an attorney in the room on
23 the line?

24 A. No.

25 Q. Is there anyone in the room with you,

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1 Doctor?

2 A. No.

3 Q. Okay. Have you ever given a deposition
4 before?

5 A. No.

6 Q. Great. So just to help --

7 A. New experience.

8 Q. Yes, it's going to be a lot of fun,
9 memorable, I'm sure. I'll give you guidance to
10 help make the day go a little bit more smoothly.
11 Mostly the most important person on this call is
12 Ms. Pamela Carle, because she's writing down every
13 word that we're saying.

14 So to help things go smoothly, I'll ask
15 you to let me finish a question before responding,
16 and I'll do the same. Does that sound all right,
17 Doctor?

18 A. Yes.

19 Q. And if you don't understand one of my
20 questions, will you please let me know?

21 A. Uh-hum. Yes.

22 Q. And if you do respond, I'll assume you
23 understood my question, is that fair?

24 A. Fair. And if I don't answer in a way
25 that makes sense, maybe I didn't understand it but

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1 I thought I did.

2 Q. We'll try to make that clear as well.
3 And that reminds me, I have a habit of uh-hums and
4 uh-hums and shaking my head, but for purposes of
5 today, if you, too, have that habit, can you
6 please do your best to give verbal responses so
7 that Pamela can note them down?

8 A. Yes.

9 Q. And finally, you're welcome to take
10 breaks, just let me know when you need one. All I
11 ask is if there's a question pending, you answer
12 that before we break. Does that sound all right,
13 Doctor?

14 A. Yes.

15 Q. And I will ask for breaks, too. I'm a
16 little more than five months pregnant, so I'll be
17 using the bathroom --

18 A. Say no more.

19 Q. All right, Doctor Bar-Yam, let's get
20 this going.

21 I'd like to introduce, with the help of
22 my colleague, Mr. Young, tab 17.

23 MS. ESFANDIARIFARD: And we'll mark
24 this as Exhibit 1.

25 (Bar-Yam Exhibit 1 was marked for

1 identification.)
 2 BY MS. ESFANDIARIFARD:
 3 Q. And do you see here, Doctor Bar-Yam,
 4 that is -- Mr. Young has zoomed in on what appears
 5 to be your LinkedIn page. Do you recognize that?
 6 A. I do. I haven't looked at it in a
 7 while, but it looks familiar, yeah.
 8 Q. But no reason to dispute that this is
 9 your LinkedIn page, Doctor?
 10 A. Correct.
 11 Q. And it indicates that you are director
 12 emerita at Mothers' Milk Bank Northeast. Did I
 13 read that correctly?
 14 MR. ROJAS: Can I just interrupt?
 15 Sorry. Have these exhibits been sent over to me,
 16 or are they being sent now?
 17 MS. ESFANDIARIFARD: They are being
 18 sent, Mr. Rojas, via the chat, I believe.
 19 MR. ROJAS: Okay. Sorry for the
 20 interruption, but I've got to figure this out.
 21 MS. ESFANDIARIFARD: Understood.
 22 MR. ROJAS: I don't see that.
 23 THE WITNESS: I'm not seeing anything
 24 in the chat.
 25 MEETING TECHNICIAN: Give me one

1 second, I just had to rename it. It's coming up
 2 right now.
 3 MR. ROJAS: Hannah, are you able to
 4 access that?
 5 I see it now.
 6 BY MS. ESFANDIARIFARD:
 7 Q. And did I read that correctly,
 8 Doctor Bar-Yam, that the title underneath your
 9 name on your LinkedIn page is director emerita at
 10 Mothers' Milk Bank Northeast?
 11 A. Correct.
 12 Q. And you're director emerita because
 13 you're no longer the director at Mothers' Milk
 14 Bank Northeast, true?
 15 A. Correct.
 16 Q. And to make today easier, if I said
 17 Northeast Milk Bank, would we still be talking
 18 about the same thing? Will you understand what
 19 I'm talking about?
 20 A. Yes.
 21 Q. Northeast Milk Bank. You left that
 22 position --
 23 MS. ESFANDIARIFARD: Jeremy, if we just
 24 go on the page --
 25 BY MS. ESFANDIARIFARD:

1 Q. You left your position as director of
 2 the Northeast Milk Bank in March of 2020, do I
 3 have that right?
 4 A. Yes.
 5 Q. Why did you leave in March of 2020,
 6 briefly?
 7 A. The brief answer is I retired.
 8 Q. Understood. You founded Northeast Milk
 9 Bank, true, Doctor?
 10 A. Correct.
 11 Q. And I think, as I understand it, you
 12 started the journey to create Northeast Milk Bank
 13 for 2006, do I have that right?
 14 A. Correct.
 15 Q. And at some later time, as I understand
 16 it, Doctor Bar-Yam, you became the president of
 17 Human Milk Banking Association of North America,
 18 also referred to as HMBANA, in 2016, is that
 19 correct?
 20 A. Correct.
 21 Q. And the relevant time period in this
 22 litigation, Doctor Bar-Yam, is 2014. That's when
 23 the infant RaiLee was born, January 1st, 2014.
 24 You never had any milk bank experience in 2014
 25 apart from the Northeast Milk Bank, true?

1 A. I'm not sure what you mean by
 2 experience with milk banks. I was never with any
 3 other milk bank. Is that what you're asking?
 4 Q. Yes. So let me ask a better question.
 5 Thank you. By the time 2014 you had not worked
 6 for any other milk bank apart from Northeast Milk
 7 Bank, true?
 8 A. Correct.
 9 MS. ESFANDIARIFARD: And now we can
 10 take that down, Mr. Young, and I'd like to turn to
 11 tab 3, which will be marked as Exhibit 2.
 12 (Bar-Yam Exhibit 2 was marked for
 13 identification.)
 14 MS. ESFANDIARIFARD: And if I wasn't
 15 clear before, the prior document was Exhibit 1,
 16 for the record.
 17 Okay, if we can zoom in a little bit,
 18 Mr. Young.
 19 MR. ROJAS: I'm sorry, I have to
 20 interrupt again. So I need these exhibits to be
 21 coming in at least contemporaneously with them
 22 being put on the screen.
 23 MS. ESFANDIARIFARD: I think that is
 24 the intention, Mr. Rojas, I think it just takes a
 25 moment for it to send.

MR. ROJAS: I don't know if you want to upload them ahead of them. I don't want to keep interrupting, but I can't have the questions being asked about the document without me seeing it contemporaneously.

MS. ESFANDIARIFARD: We're going to do our best to do that, but I'd also like to move as efficiently as possible. Mr. Young I believe has just sent it via the chat. There we go.

Can we put back up what's now marked as Exhibit 2? All right.

BY MS. ESFANDIARIFARD:

Q. And Doctor Bar-Yam, do you see what is on the screen here what is a prior version of the Northeast Milk Bank's Web site?

MS. ESFANDIARIFARD: If we take down that zoom-in.

BY MS. ESFANDIARIFARD:

Q. Do you recognize this Web page, Doctor Bar-Yam?

A. Yes.

Q. And this was the Web site of the Northeast Milk Bank in 2013. If we zoom in at the top I can show you -- sorry, the bottom, the copyright. Do you see that?

A. Yup, I do.

Q. And I'd like to zoom in on the top where we have "welcome," under "welcome."

"The Mothers' Milk Bank Northeast, formally Mothers' Milk Bank of New England, is a nonprofit community milk bank operating under the guidelines of Human Milk Banking Association of North America, HMBANA." Did I read that right?

A. Yes.

Q. And then it states, Doctor Bar-Yam, "Our goal is to provide donated pasteurized human milk to babies in fragile health throughout the Northeast Region."

This statement was true back when you were director of Northeast Milk Bank back in 2013, right?

A. That was our goal, correct.

Q. And this statement was also true when you were director of the Northeast Milk Bank in the year 2014, true?

A. Correct.

Q. And the Northeast includes states like Massachusetts, Connecticut, New York, New Jersey, Rhode Island, et cetera, true?

A. Correct.

Q. You understand that the infant in this litigation, RaiLee, was born in West Virginia, Doctor Bar-Yam?

A. Correct. I do understand.

Q. And we agree the Northeast does not include the state of West Virginia, right?

A. I guess not. I haven't thought about it.

Q. Would you like to see a census report that lists the states, or do you feel confident you agree with --

A. No, I'm fine with that.

Q. So for the record, we can agree that the state of West Virginia is not in the Northeast, true?

A. True.

MS. ESFANDIARIFARD: We can take that down.

BY MS. ESFANDIARIFARD:

Q. My understanding, Doctor Bar-Yam, based on a little bit of research is that around 2013, 2014, the Northeast Milk Bank very impressively served about 30 hospitals in the Northeast Region. Does that sound right to your memory?

A. To my memory, yes. I don't know the

exact number, I don't have it in front of me, but to my memory, that's about right.

Q. As best as you can recall, in the 2014 time range the Northeast Milk Bank served about 30 hospitals, is that true?

A. Yeah.

Q. Was that a yes, Doctor?

A. Yes, sorry.

Q. No, that's okay. Don't apologize. And my understanding, again based on my research at that time, there were over a hundred NICUs in the Northeast, is that right?

A. Yes.

Q. And of the 30 hospitals that you served at the Northeast Milk Bank, including in 2014, none were located in West Virginia, true?

A. True.

Q. And just to be abundantly clear, CAMC Hospital is one of the hospitals -- is a hospital in West Virginia. That was not one of the hospitals you served in 2014 at the Northeast Milk Bank, true?

A. True.

Q. And for the record, CAMC is Charleston -- of course I just blanked out.

Charleston Area Medical Center.

Are you aware, Doctor Bar-Yam, that RaiLee was born in a hospital called Somersville Regional Medical Center in Charleston, West Virginia?

A. I was not aware of that.

Q. And you would agree -- oh, I'm sorry. I will represent to you that RaiLee was born in a hospital called Somersville Regional Medical Center in Charleston, West Virginia and then transferred to CAMC.

Northeast Milk Bank did not have a contractual relationship with CAMC in 2014, true?

A. Correct.

Q. And you didn't have a professional relationship with CAMC or its NICU in 2014, true?

A. True.

Q. Are you aware, Doctor, that a natal nurse by the name of Mary Sheridan was one of RaiLee's treaters in 2014?

A. I was not aware.

Q. You have never had a professional relationship with Mary Sheridan from CAMC?

A. Not to my recollection.

Q. And sitting here today, you can't think

of ever having spoken with, met with a nurse Mary Sheridan from CAMC, true?

A. True. Again to my recollection. It's possible I did, I spoke with a lot of people to my recollection, but I don't recollect.

Q. I'm sorry to interrupt you. To the best of your recollection --

A. To the best of my recollection.

Q. And same would be true of a treater for RaiLee named Doctor Jayesh Shah. You have never had, to the best of your recollection, a professional relationship with the doctor Jayesh Shah, is that true?

A. True.

Q. Including in the year 2014?

A. True.

Q. And the same is true in the year 2014 of a Doctor Stefan Maxwell. You did not have a professional relationship with Doctor Stefan Maxwell of CAMC in 2014, true?

A. True.

BY MS. ESFANDIARIFARD:

Q. We can -- well, actually, I'll say this, Doctor Bar-Yam. We talked about this for a moment earlier, but we've spoken briefly on the

phone on April 10th. My notes indicate that we spoke around 11 a.m. Pacific Time, which is where I'm based, for approximately 30 minutes. Do you have any reason to dispute that?

A. No.

Q. And during that conversation, Doctor Bar-Yam, my colleague and I, Rebecca Fitzpatrick, asked you about your time with the Northeast Milk Bank, do you remember that?

A. I do.

Q. And when we spoke, Doctor Bar-Yam, you told us that you cannot think of an instance in 2014 or earlier in which the Northeast Milk Bank filled any request for human donor milk in the state of West Virginia, do you remember that?

A. I do.

Q. And that's a true statement, right? You cannot think of a single instance in 2014 or earlier in which Northeast Milk Bank fulfilled any request for human donor milk in the state of West Virginia, true?

A. That is true.

Q. And sitting here today, Doctor Bar-Yam, you cannot think of a single instance in 2014 or earlier in which Northeast Milk Bank fulfilled any

request for human donor milk specifically at CAMC NICU in the state of West Virginia, true?

A. True.

Q. And just a couple of questions about the litigation, which I understand if you don't know the answer, but I'd just like to ask.

Doctor Bar-Yam, you don't know Ms. Erika Mar, a plaintiff in this litigation, true?

A. I do not, no. Correct.

Q. You don't know the circumstances in which Ms. Mar gave birth to RaiLee Mar on January, 1, 2014, true?

A. I do not know, correct.

Q. You do not know Ms. Mar's medical history, true?

A. True.

Q. And to be clear, you've never spoken with Ms. Erika Mar?

A. True.

Q. You've never spoken with RaiLee's father, Anthony Mar, true?

A. True.

Q. And you have no first-hand knowledge about Erika Mar's pregnancy with RaiLee?

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1 A. True.
2 Q. And you have no first-hand knowledge
3 about RaiLee Mar whatsoever, true?

4 A. True.

5 Q. Okay. I'd like to move on to talking
6 about donor milk again. I think I read you once
7 write (sic), "No milk bank has sufficient supply
8 to replace formula." Is that a true statement?

9 A. That -- that's a very broad statement.
10 That could be -- and is true broadly.

11 Q. And so that I do a better job and ask a
12 better question, it's true that no milk bank has
13 enough donor milk to replace formula use in the
14 United States, true?

15 A. True.

16 Q. This was also true in 2014?

17 A. True.

18 Q. It's true today, Doctor Bar-Yam?

19 A. True.

20 Q. In an ideal world, I understand it, you
21 would love if that could be the case?

22 A. That's a more complicated question than
23 it sounds like.

24 Q. I'll ask a better question.

25 A. I'm not sure what you want to know.

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1 Q. And just to be more -- let me ask a
2 better question. The milk banks collectively in
3 the United States do not have sufficient supply of
4 donor milk to replace formula use in the United
5 States, true?

6 A. True.

7 Q. And as I understand it, as I've learned
8 it from your writings, donor milk is typically a
9 bridge product, meaning it's intended to serve as
10 a temporary substitute, true?

11 A. True.

12 Q. And to be clear for the record, the
13 Northeast Milk Bank did not in 2014 have enough
14 donor milk to replace formula used throughout the
15 United States, true?

16 A. True.

17 MS. ESFANDIARIFARD: I'd like to turn
18 to tab 3.3, Mr. Young. I'll allow you to share it
19 via PDF, and then share it on the screen as well.

20 Mr. Young, I assume you're working on
21 it, but you heard me?

22 MEETING TECHNICIAN: Yup, just renaming
23 the file. It will be up in one second.

24 MS. ESFANDIARIFARD: Thank you very
25 much. Excellent.

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1 BY MS. ESFANDIARIFARD:

2 Q. And Doctor Bar-Yam, this is again from
3 the 2013 Web site of Northeast Milk Bank at
4 milkbankNE.org, and this is under the milk donor
5 FAQs. Do you see that?

6 A. Yes, I do.

7 Q. Any reason to dispute this is the Milk
8 Bank Northeast Web site?

9 A. Looks like it.

10 MS. ESFANDIARIFARD: Let's show
11 Doctor Bar-Yam just to avoid any doubt, the URL at
12 the top, milkbank.org.

13 BY MS. ESFANDIARIFARD:

14 Q. MilkbankNE.org, do you see that?

15 A. Yup, I do.

16 Q. You recognize that as the correct Web
17 site, Doctor?

18 A. Yes, I do.

19 MS. ESFANDIARIFARD: Now, turning to
20 milk bank FAQs, let's look at the first question,
21 please, Mr. Young.

22 BY MS. ESFANDIARIFARD:

23 Q. In 2013 on the Web site for Northeast
24 Milk Bank, "Is there a great need for milk
25 donors?" Answer, "yes," exclamation point.

Page 25

1 Do you see that?

2 A. Yes, I do.

3 Q. And that was a true statement, correct,
4 there was a great need for milk donors in 2013?

5 A. Yes.

6 Q. And the next sentence, Doctor Bar-Yam,
7 "Nationwide, infant's medical need for donor human
8 milk far surpasses the supply and continues to
9 increase."

10 That's also a true statement,
11 Doctor Bar-Yam?

12 A. Again, it's complicated.

13 Q. Is it not true -- oh, go ahead,
14 Doctor Bar-Yam. I didn't mean to interrupt you.

15 A. It's a complicated question, but it
16 does -- yeah, not going into a lot of detail, it's
17 complicated.

18 Q. Well, let me try to understand that,
19 Doctor Bar-Yam. You would agree with me that in
20 2013 and in 2014, "The nationwide infant need for
21 donor human milk far surpassed the supply and
22 continued to increase," as you indicated on the
23 Northeast Milk Bank's Web site under donor -- milk
24 banking facts?

25 A. I need to think about this for a

1 minute. I mean, you're asking a yes-or-no
2 question. I can give it a qualified yes.

3 Q. What's the qualification,
4 Doctor Bar-Yam?

5 A. That donor human milk is used for
6 multiple purposes, and we have, as part of our
7 operational standards and guidelines, a
8 prioritization of who gets milk when there is a
9 shortage.

10 Q. Understood.

11 A. -- and -- usually it's a temporary
12 shortage at any one milk bank, and the fragile NICU
13 babies are at the top of the list --

14 Q. Understood.

15 A. -- to be receiving milk.

16 Q. Understood. So understanding that t
17 Northeast Milk Bank you practiced prioritization
18 of the distribution of the donor milk, including
19 by putting NICU babies at the beginning of the
20 list, it's still a factual statement, is it not,
21 Doctor Bar-Yam, that in 2013 and 2014 the need,
22 the medical need for donor milk far surpasses the
23 supply and continues to increase, true?

24 A. I suppose, yes.

25 Q. Why do you suppose?

1 A. Because that was at a moment in time,
2 and it fluctuates. Fluctuates much more than
3 something on a Web site from back in 2013 would
4 indicate.

5 Q. Understood. Understood. But in
6 2013 --

7 A. 2013 or 2014, or whenever it was.
8 (Reporter requests clarification.)

9 BY MS. ESFANDIARIFARD:

10 Q. So let me just try asking that question
11 one more time clearly for the record,
12 Doctor Bar-Yam, because I was guilty of
13 interrupting you, and I apologize for that.

14 We can agree in that 2013 and 2014 it's
15 a factual statement that the infant's medical need
16 for donor human milk far surpasses the supply and
17 continues to increase, true?

18 A. True.

19 MS. ESFANDIARIFARD: And I'd like to
20 take this exhibit down, Mr. Young, and I'd like to
21 turn to tab 6, which will be now marked as I
22 believe Exhibit 4, Ms. Carle, do I have that
23 right?

24 COURT REPORTER: I will have to check
25 the transcript.

1 MEETING TECHNICIAN: That's right, it's
2 Exhibit 4.

3 COURT REPORTER: Thank you.

4 MS. ESFANDIARIFARD: Thank you,
5 Mr. Young. The prior one was Exhibit 3, so now
6 tab 6 will be Exhibit 4.

7 (Bar-Yam Exhibit 3 was marked for
8 identification.)

9 (Bar-Yam Exhibit 4 was marked for
10 identification.)

11 BY MS. ESFANDIARIFARD:

12 Q. All right. Doctor Bar-Yam --

13 MR. ROJAS: I don't have it yet.

14 MS. ESFANDIARIFARD: I think I see it.

15 MR. ROJAS: It just popped up, yes.

16 MS. ESFANDIARIFARD: Thanks, Mr. Rojas.

17 BY MS. ESFANDIARIFARD:

18 Q. Doctor Bar-Yam, do you seen on the
19 screen we have an article from the Hanover Mariner
20 in Massachusetts from September 5, 2012 entitled
21 "donors sought." Do you see that?

22 A. Uh-hum. Yes, I do.

23 Q. And I'd like to show you the content of
24 the article here on the screen.

25 BY MS. ESFANDIARIFARD: If you go to

1 the body, the first half, and zoom it in, there we
2 go.

3 BY MS. ESFANDIARIFARD:

4 Q. Do you see around the third or so line
5 you are quoted, Doctor Bar-Yam, and you stated,
6 "There is definitely a demand for milk, said Naomi
7 Bar-Yam, executive director of MMBNE. We need
8 more donors."

9 That was a true statement on September
10 5, 2012, true?

11 A. True.

12 Q. It was also, based on our conversation,
13 as I understand it, you needed more donors in
14 2013; true?

15 A. True.

16 Q. You needed more donors in 2014; true?

17 A. True.

18 MS. ESFANDIARIFARD: We can take that
19 down, Mr. Young.

20 BY MS. ESFANDIARIFARD:

21 Q. As I understand it, Doctor Bar-Yam,
22 there is no evidence or records indicating that
23 Northeast Milk Bank ever discarded unused donor
24 milk in the 2013 to 2014 timeframe. Do you agree
25 with that statement?

1 A. No. What do you mean by never
2 discarded?

3 Q. Yeah, that's a good -- let me clarify.
4 In 2013 and 2014 and the other times
5 that you were the director of the Northeast Milk
6 Bank, you endeavored, and the milk bank
7 endeavored, to use all the donor milk that passed
8 the testing that was pasteurized and available.
9 You didn't throw any away?

10 A. Correct.

11 Q. It's valuable, right, so you used every
12 drop is what I'm getting at, true?

13 A. Yes.

14 Q. You didn't let it spoil. You took care
15 of it, and you used what you had without wasting
16 any, fair?

17 A. Correct.

18 Q. And am I right, Doctor Bar-Yam, that
19 you have no personal knowledge of what the
20 availability for donor milk was -- donor milks
21 closer to the state of West Virginia, true?

22 A. True.

23 Q. Those, as I understand it, would
24 have -- those milk banks, as I understand it, that
25 are closer to West Virginia, including in 2013 and

1 2014, would have, for example, been in the
2 Pittsburgh region, is that right?

3 A. No. The milk bank in Pittsburgh was
4 not opened in 2013.

5 Q. Understood. Sitting here today, are
6 you aware of which states closer to West Virginia
7 that served West Virginia would have had donor
8 milk in 2013 and 2014?

9 A. Ohio.

10 Q. Ohio, okay. And in 2013 and 2014, you
11 did not work for a donor milk bank or any donor
12 milk bank in the state of Ohio, true?

13 A. Correct.

14 Q. And you didn't have, and you don't have
15 personal knowledge of what the availability for
16 the donor milk was in the donor milk banks in Ohio
17 in 2013 and 2014, correct?

18 A. Correct. There's only one milk bank in
19 Ohio. You said milk banks. Just to be clear,
20 there's only one milk bank in Ohio.

21 Q. Thank you for correcting the record.
22 Do you recall the name of it, by chance?

23 A. I think it was just Mothers' Milk Bank
24 of Ohio. I don't remember what it was called,
25 actually. Mothers' Milk Bank of Ohio or something.

1 Ohio's Mothers' Milk Bank, I think that was what it
2 was called.

3 Q. Fair enough. And as I understand it,
4 Northeast Milk Bank is and was located in Newton
5 Upper Falls, Massachusetts?

6 A. Correct.

7 Q. It was always located there, including
8 2013 and 2014, is that right?

9 A. Correct. We moved there in 2013.

10 Q. Okay. And that's approximately 700
11 miles from Charleston, West Virginia, do you
12 understand that?

13 A. I believe you.

14 Q. Okay. We can agree that the Ohio milk
15 bank would have been much closer to West Virginia
16 than Northeast Milk Bank in Newton Upper Falls,
17 Massachusetts, true?

18 A. Correct.

19 Q. I want to talk a little bit,
20 Doctor Bar-Yam, as I understand the many steps
21 that donor milk banks, including Northeast Milk
22 Bank, take to ensure that the milk that they're
23 distributing is safe, including for fragile,
24 preterm infants.

25 I'm going to go over what I understand

1 to be the steps Northeast Milk Bank took, and I
2 just want to make sure I have that right. Does
3 that sound all right?

4 A. Okay.

5 Q. As I understand it, Doctor Bar-Yam, in
6 order to donate milk, breast milk to the Northeast
7 Milk Bank, including in 2013 and 2014, donors had
8 to first go through a telephone screening, true?

9 A. Correct.

10 Q. They had to complete a health history,
11 is that right?

12 A. Correct.

13 Q. The donors must be nonsmokers, true?

14 A. Correct.

15 Q. The donors can be no more than
16 occasional, light alcohol users, right?

17 A. Correct.

18 Q. Their blood is tested for HIV, true?

19 A. Correct.

20 Q. Their blood is tested for HTLV, true?

21 A. Correct.

22 Q. Their blood is tested for hepatitis B,
23 true?

24 A. Correct.

25 Q. And their blood is tested for hepatitis

1 C, correct?

2 A. Correct.

3 Q. And these are some of the steps taken
4 among other criteria, true?

5 A. Correct.

6 Q. Do any of the other criteria come to
7 mind right now that I've left out, by chance,
8 Doctor Bar-Yam?

9 A. Blood test was also for syphilis.

10 Q. Okay.

11 A. And donors needed a -- the donor's
12 child's pediatrician and the donor's doctor to sign
13 a form that they did not have concerns about
14 donating.

15 Q. Understood. And as I understand it,
16 you also test for certain medications, because
17 certain medications that might be okay for mom are
18 actually contraindicated with donating breast
19 milk, true?

20 A. We don't test for medications, but we
21 do ask, indeed, for a medication history, what
22 medications the mother's on, correct.

23 Q. Understood. And as I understand it,
24 sometimes donor milk can have bacteria or even,
25 surprisingly, fecal contamination from poor hand

1 hygiene. So for these reasons, among others, the
2 milk donations are cultured to test for bacteria,
3 right?

4 MR. ROJAS: Objection.

5 THE WITNESS: Sorry?

6 MR. ROJAS: Sorry, I just have to make
7 a record of the objections.

8 BY MS. ESFANDIARIFARD:

9 Q. Mr. Rojas is entitled to object to my
10 questions throughout the deposition,
11 Doctor Bar-Yam, but you are still required to
12 answer the question.

13 Would you like me to restate it?

14 A. Yes, please.

15 Q. So let me try with a simpler one first.
16 As I understand it, Doctor Bar-Yam, donor milk is
17 cultured to test for bacteria, true?

18 A. Correct.

19 Q. And from what I've read, that is
20 because sometimes donor milk can have high
21 bacterial counts, including from poor hand
22 hygiene, for example?

23 MR. ROJAS: Objection.

24 A. Correct.

25 BY MS. ESFANDIARIFARD:

1 Q. Now, once these steps that we've just
2 discussed are taken, the milk donations are then
3 pasteurized, true?

4 A. Correct.

5 Q. Northeast Milk Bank took the steps we
6 just discussed before distributing its donated
7 milk to hospitals and other individuals, true?

8 A. Correct.

9 Q. The Northeast Milk Bank did not
10 distribute informal milk donations, true?

11 A. Correct.

12 MS. ESFANDIARIFARD: I'd like to turn,
13 Mr. Young, to tab 14, which will be Exhibit 7. I
14 hope that is true.

15 (Bar-Yam Exhibit 5 was marked for
16 identification.)

17 MEETING TECHNICIAN: It will be
18 Exhibit 5. Just give me one second to rename the
19 file. It will be up shortly.

20 MS. ESFANDIARIFARD: Yes, so this will
21 be Exhibit 5. I apologize.

22 BY MS. ESFANDIARIFARD:

23 Q. Have you heard, Doctor Bar-Yam, that
24 lawyers are terrible at math, including counting
25 to ten?

1 A. Hadn't heard that one.

2 Q. Much to my father's disappointment I
3 did not go to medical school, but here we are.

4 MS. ESFANDIARIFARD: Okay, I have
5 marked as Exhibit 5 for the record an article from
6 the Chicago Tribune online dated September 26,
7 2017, how to donate breast milk to moms in
8 Houston.

9 BY MS. ESFANDIARIFARD:

10 Q. Do you see that, Doctor Bar-Yam?

11 A. I do.

12 Q. Do you recognize by chance -- it's been
13 a long time, but do you remember this article, by
14 any chance?

15 A. Not at the moment.

16 Q. No worries. Let's pull up the first
17 half. It's an article in which you are quoted,
18 Doctor Bar-Yam, in connection with milk donations
19 going to flood victims at the time in Houston in
20 2017. Do you see that?

21 A. Okay. Yes.

22 Q. And that's quoting you, Doctor Bar-Yam,
23 true?

24 A. Correct.

25 Q. And it covers a little bit of what we

1 just talked about, but I'll read the first
2 sentence of the article for the record.

3 "Human milk can transmit serious
4 illnesses such as syphilis and HIV, so the best
5 way for mothers to donate milk to flood victims in
6 Houston is through a milk bank, according to Naomi
7 Bar-Yam, president of the board of The Human Milk
8 Banking Association of North America."

9 That's a true statement, right? That's
10 the best way for individuals to receive milk?

11 A. Correct.

12 Q. And the next paragraph, if we can look
13 at it -- sorry, thank you.

14 Oh, I'm sorry, the next sentence reads,
15 "Bar-Yam is worried that best practices may not
16 have been followed in the high-profile case of a
17 Missouri woman who donated nearly eight gallons of
18 milk to flood victims." Do you see that?

19 A. Yes, I do.

20 Q. And as I understand what you're
21 expressing in this article is that you're worried
22 about an instance of informal milk sharing, is
23 that right?

24 A. Correct.

25 Q. Milk that is not tested, pasteurized,

1 et cetera, correct?

2 A. Correct.

3 Q. And if we look at the next sentence,
4 Doctor Bar-Yam, "At milk banks donors are
5 screened, their blood is tested, and a doctor has
6 to sign off on the mother's health."

7 That's a true statement of what
8 Northeast Milk Bank did before distributing its
9 donor milk, true?

10 A. True.

11 Q. And it says that, "The milk is tested
12 for pathogens, pasteurized and tested again,
13 Bar-Yam said." Do you see that?

14 A. Yes.

15 Q. And that's a true description and
16 statement of what Northeast Milk Bank would do
17 with its donor milk before distributing it, true?

18 A. True.

19 Q. And these are all important steps to
20 take before you distribute donor milk to an
21 infant, let alone a fragile, premature infant,
22 true?

23 A. True.

24 MS. ESFANDIARIFARD: We can take that
25 down, Mr. Young. Let's turn to tab 3.2, which

1 will be marked as Exhibit 6.

2 (Bar-Yam Exhibit 6 was marked for
3 identification.)

4 THE WITNESS: Or whatever number we're
5 up to.

6 MS. ESFANDIARIFARD: Exactly.

7 BY MS. ESFANDIARIFARD:

8 Q. And while Mr. Young is pulling that up,
9 you advise mothers against giving their babies,
10 including preterm babies an informal donor milk --
11 informal donor milk, true?

12 A. True.

13 Q. All right. 3.2.

14 MS. ESFANDIARIFARD: I'm sorry, I must
15 have misspoke. That's my fault, Mr. Young. There
16 we go.

17 Marking as Exhibit 6 the Northeast Milk
18 Bank.org's Web site page regarding potential
19 donors from 2013.

20 If we could zoom in at the top again to
21 show Doctor Bar-Yam the milkbank.org portion so
22 that she recognizes it.

23 A. Yeah, no, I do. It just didn't look
24 like the Web site when we had it set up, but that's
25 because you got it from an archive. So I

1 understand that.

2 BY MS. ESFANDIARIFARD:

3 Q. You understand that this is the 2013
4 version of Milk Bank Northeast Web site on
5 potential donors?

6 A. Uh-hum. Yes.

7 Q. Let's look at the potential donors
8 underneath the -- I think that's a very clever
9 Superman, but donor breast milk, logo. All right,
10 let's go underneath that. All right.

11
12 MS. ESFANDIARIFARD: Hold on a second,
13 I may have made Mr. -- give me one moment here.

14 BY MS. ESFANDIARIFARD:

15 Q. Okay, you see at the top,
16 Doctor Bar-Yam it says, "We are in need of donors
17 who can share the health." Do you see that?

18 A. Yes, I do.

19 Q. And that's a true statement, including
20 in 2013, Northeast Milk Bank was in need of donors
21 who could provide donor milk?

22 A. Yes.

23 Q. And if we look underneath here, it sets
24 out some of the guidelines we talked about that
25 Northeast Milk Bank follows when accepting donor

1 milk.

2 Donor mothers must be, and I'm going to
3 read this, "In good health, not regularly on most
4 medications or herbal supplements with the
5 exception of prenatal vitamins, human insulin,
6 thyroid replacement hormones, nasal sprays, asthma
7 inhalers, topical treatments, eyedrops,
8 progestin-only or low-dose estrogen birth control
9 products. For other exceptions please contact a
10 milk bank for more information.

11 "Donor mothers must be willing to
12 undergo blood testing at the milk bank's expense,
13 and donor mothers must be willing to donate at
14 least 150 ounces of milk."

15 Did I read that right?

16 A. Yes.

17 Q. And that's a true statement of what
18 donor mothers must be to donate their breast milk
19 to Northeast Milk Bank, including in 2013 and
20 2014?

21 A. Yes.

22 Q. It goes on to say that donor mothers
23 must be -- excuse me, strike that.

24 It goes on to say, "A woman is not a
25 suitable donor if she uses illegal drugs."

1 That's also a true statement?

2 A. Yes. Yes.

3 Q. "A woman is not a suitable donor if she
4 smokes or uses tobacco products"?

5 A. Correct.

6 Q. And that's a true statement?

7 A. Yes.

8 Q. And it goes on to list several other
9 elements that make a woman not suitable to donate.
10 Do you see that?

11 A. Yes, I do.

12 Q. I'm just going to read all of them at
13 one time.

14 "A woman is not a suitable donor if she
15 has received a blood transfusion or blood
16 products, except RhoGAM, in the last four months,
17 has received an organ or tissue transplant in the
18 last 12 months, regularly has more than 2 ounces
19 of alcohol per day, has a positive blood test for
20 HIV, HTLV, hepatitis B or C, or syphilis, or her
21 sexual partner is at risk for HIV, has been in the
22 United Kingdom for more than three months 1980 to
23 '96, has been in Europe for more than five years
24 1980 to present."

25 Did I read that correctly,

1 Doctor Bar-Yam?

2 A. Yes.

3 Q. And this was a true statement. All the
4 elements I just read, if applicable, would make a
5 woman not a suitable donor?

6 A. Yes.

7 MS. ESFANDIARIFARD: Okay, we can take
8 that down, Mr. Young. Let's turn now to what I'll
9 mark as Exhibit 7, and it will be tab 3.4.

10 (Bar-Yam Exhibit 7 was marked for
11 identification.)

12 MS. ESFANDIARIFARD: We already have
13 this up, so I probably should have written down
14 what exhibit it was, I'm sorry. It's the milk
15 banking FAQs, but we'll just bring it back up.

16 BY MS. ESFANDIARIFARD:

17 Q. Do you remember this exhibit,
18 Doctor Bar-Yam?

19 A. Yes, I do.

20 Q. Let's turn to page 2. I'd like to
21 focus on a section called "how is donor milk
22 processed" about halfway down the page.

23 Do you see where it says,
24 Doctor Bar-Yam on the Northeast Milk Bank's Web
25 site "how is donor milk processed"?

1 A. Yes.

2 Q. The answer provided on the Northeast
3 Milk Bank's Web site is, "Frozen donor milk is
4 thawed. Some samples are cultured, pooled and
5 poured into bottles, then pasteurized at 62.5
6 Celsius in a shaking water bath or automatic
7 pasteurizer."

8 First, did I read that right?

9 A. Yes.

10 Q. And is that true, that's how donor milk
11 was processed at Northeast Milk Bank throughout
12 your tenure there, including 2013 and 2014?

13 A. Yes.

14 Q. And for the record, for most Americans
15 who may hear this later, 62.5 Celsius I understand
16 is roughly 145 degrees Fahrenheit. Any reason to
17 dispute that?

18 A. No.

19 Q. It goes on to say, "Pasteurized milk is
20 quick-cooled, then frozen at negative 20 Celsius.
21 Microbiological cultures are obtained by an
22 independent laboratory from each batch of milk
23 after pasteurization. This is done to verify that
24 no heat-resistant pathogens are present before
25 pasteurization, and that there is zero growth of

1 bacteria after the heating process."

2 That's a true statement regarding the
3 steps Northeast Milk Bank took throughout your
4 time there when processing the donor milk it
5 received and ultimately distributed, true?

6 A. True.

7 Q. And this is a process you would
8 recommend be followed before donor milk is shared
9 with an infant, including a premature infant,
10 true?

11 A. True.

12 MS. ESFANDIARIFARD: We can take that
13 down, Mr. Young.

14 BY MS. ESFANDIARIFARD:

15 Q. As I understand it, Doctor Bar-Yam,
16 when you worked at Northeast Milk Bank and later
17 at HMBANA, you experienced instances in which you
18 had to turn down up to 20 percent of women who
19 applied to donate their milk because they didn't
20 pass screening, does that sound right?

21 A. I would have to -- I don't know whether
22 it was 20 percent.

23 Q. Okay, let's --

24 A. That seems high to me, but I would have
25 to confirm that.

1 Q. That's fair. I was just trying to move
2 along more quickly.

3 MS. ESFANDIARIFARD: But we can mark as
4 an Exhibit 8 what is tab 18, Mr. Young. Actually,
5 let's take a break. How long have we been going?
6 Does everyone mind if we take about a five-minute
7 break at this juncture?

8 MR. ROJAS: Fine.

9 MS. ESFANDIARIFARD: I apologize in
10 advance. It will be about every hour or so.
11 Thank you so much.

12 (Recess taken.)

13 MS. ESFANDIARIFARD: We're back on the
14 record here.

15 BY MS. ESFANDIARIFARD:

16 Q. Doctor Bar-Yam, thank you for joining
17 us after a brief break. I want to wrap up some
18 questions about milk sharing that we were just
19 discussing.

20 As I understand it, milk banks follow
21 strict protocols, based on our conversation, for
22 screening, handling and pasteurizing when user
23 donor milk, and Northeast Milk Bank did the same,
24 true?

25 A. True.

1 Q. And that's important, right,
2 Doctor Bar-Yam, because even if a mother who wants
3 to donate, and she thinks she's doing well
4 health-wise, her milk could contain bacteria that
5 her own baby has adapted to, but would be harmful
6 for another preterm infant, true?

7 MR. ROJAS: Objection.

8 A. True.

9 BY MS. ESFANDIARIFARD:

10 Q. And you would never skip pasteurizing
11 at Northeast Milk Bank just because the milk was
12 coming from another preterm mother, true?

13 A. True.

14 Q. And as I understand it, Doctor Bar-Yam,
15 human milk carries viruses, and while another baby
16 may have already been exposed to a specific milk
17 microbiome from its own mother, a different baby
18 may not have the same immune protections, true?

19 MR. ROJAS: Objection.

20 MS. ESFANDIARIFARD: And let me ask
21 that again, because I realize it was a poor
22 question. So let me try one more time.

23 MR. ROJAS: Well, I mean, once the
24 question is answered (sic) you've got to let her
25 try to answer, but I guess you're moving to

1 strike.

2 MS. ESFANDIARIFARD: Yes, I'm moving to
3 strike only because of her facial expression. It
4 seems I asked a poor question, Jose, so I just
5 wanted to ask another one.

6 MR. ROJAS: Okay.

7 THE WITNESS: Yeah.

8 MS. ESFANDIARIFARD: So I'm going to
9 break it up.

10 BY MS. ESFANDIARIFARD:

11 Q. As I understand it, human milk carries
12 viruses, true?

13 A. True.

14 Q. Okay. And a baby may have adapted to
15 the viruses in the milk of its own mother, true?

16 MR. ROJAS: Objection.

17 A. I don't think it's a question of
18 adapted to the viruses.

19 BY MS. ESFANDIARIFARD:

20 Q. Okay, am I using the wrong term?
21 Again, I'm not a doctor here.

22 A. Neither am I; not that kind, anyway.
23 But it's not -- I have to think about this for a
24 minute.

25 I mean, without going into a rather

1 long explanation of how things are transmitted
2 through milk, I would say it's not -- it's not a
3 question of adapting to viruses.

4 Q. Okay. Am I interrupting you? Sorry,
5 Doctor Bar-Yam.

6 A. No. Go ahead.

7 Q. Let me ask a different question that's
8 hopefully a better one.

9 NICUs do not accept, to your knowledge,
10 informal milk donations for premature infants,
11 right?

12 A. Correct. Not to my knowledge.

13 MS. ESFANDIARIFARD: I'd like to -- I
14 believe this will be Exhibit 8. Turn to tab 22.

15 I believe Mr. Young is sharing it in
16 the chat.

17 Okay, once you're ready to share
18 Exhibit 8. Thank you, Mr. Young.

19 (Bar-Yam Exhibit 8 was marked for
20 identification.)

21 MS. ESFANDIARIFARD: Let's just focus
22 on the top half of the page, Mr. Young.

23 BY MS. ESFANDIARIFARD:

24 Q. Doctor Bar-Yam, you see here it's an
25 article we have on the screen and shared via chat

1 in the Atlantic Online December 1, 2017, "Should
2 women be paid for donating their breast milk?" Do
3 you see that?

4 A. Yes, I do.

5 Q. And I'd like to turn to page 2 to see
6 if we can show you where you're quoted. All
7 right, I believe -- let's see here. Expanding the
8 supply --

9 MS. ESFANDIARIFARD: Okay, there we go.
10 Thank you, Mr. Young.

11 BY MS. ESFANDIARIFARD:

12 Q. If you see at the bottom of the second
13 page in this article in the Atlantic it quotes
14 you, Doctor Bar-Yam. "Expanding the supply of
15 donor milk is about reaching out to women who
16 aren't yet aware that milk banks exist, says Naomi
17 Bar-Yam, the executive director of Mothers Milk
18 Bank Northeast, and the current president of
19 HMBANA."

20 Do you see that?

21 A. Yes, I do.

22 Q. Okay, that's you, right,
23 Doctor Bar-Yam?

24 A. Yes.

25 Q. Okay, great. And turning back to page

1 1, let's look at the third paragraph here. And
2 again, this is a 2017 article.

3 Looking at the third paragraph it
4 states, "In recent years, both milk banks and the
5 use of donated human milk have risen swiftly in
6 the United States." That's a true statement?

7 A. Yes.

8 Q. "In 2011, 22 percent of NICUs used
9 donor breast milk. Four years later the number
10 doubled to nearly 40 percent, and went even higher
11 for the most intensive NICUs, as much as 75
12 percent." Did I read that right?

13 A. Yes.

14 Q. And to your knowledge, that's a correct
15 statement? That in 2011 22 percent of NICUs used
16 donor milk, but four years later, that's by 2015,
17 that had doubled nearly to 40, and even higher to
18 75 for intensive NICUs?

19 MR. ROJAS: Objection.

20 A. Yes. To my knowledge it was based on
21 research, yes.

22 BY MS. ESFANDIARIFARD:

23 Q. Okay -- go ahead.

24 A. I mean, I read the research, I didn't
25 do the research.

1 Q. Okay. But it's your understanding
2 that --

3 A. Yes.

4 Q. -- that sounds correct?

5 MR. ROJAS: Object.

6 A. Yes.

7 BY MS. ESFANDIARIFARD:

8 Q. And there's -- as I understand it,
9 there's a shift in those four years, right? You
10 go to from 22 to 75 for most, which is a 53 --
11 sorry, let me say that again. Strike that.

12 There's a shift from 2011 to 2015 in
13 which you go from 22 percent of NICUs using donor
14 milk to as high as 75 percent in intensive NICUs,
15 which is about a 53 percent increase, right?

16 MR. ROJAS: Objection.

17 A. Yes.

18 BY MS. ESFANDIARIFARD:

19 Q. Okay. And as I understand it today, I
20 believe I read on your Web site, but I'm happy to
21 pull that up, as I understand it ten years later,
22 so today, it's approximately 90 percent of NICUs
23 that use donor milk, right?

24 A. That is my understanding.

25 Q. And this increase, including the

1 doubling of donor milk from 2011 to 2015, it
2 followed, if you recall, as you may recall, the
3 2012 AAP statement about breastfeeding, right?

4 A. Yeah. I haven't thought about it, but,
5 yes, that was -- there was an AAP statement that
6 came out in 2012.

7 Q. And do you recall that statement about
8 breastfeeding and the use of human milk that came
9 out by the AAP in 2012?

10 A. I don't recall every word of it, but I
11 did read it multiple times, so, yes, I do recall
12 the article.

13 Q. Okay. And do you recall that it
14 encouraged in 2012 the use of breast milk and
15 human milk in NICUs?

16 A. Yes.

17 Q. And would you agree that it was in this
18 time period, 2011 to 2015, after the 2012 AAP
19 statement that donor milk use doubled in NICUs, or
20 nearly more than doubled?

21 A. I'm not sure whether you're making a
22 direct cause-and-effect statement.

23 Q. Fair. Let me ask -- oh, go ahead.

24 A. Yeah, I'm not clear what you're asking
25 and whether this is, you know, cause/effect, or

1 you're asking something else.

2 Q. Understood. Let me ask a more specific
3 question about the AAP 2012 statement.

4 Do you recall that the recommendation
5 by the AAP in 2012 was to use human milk,
6 including to reduce the risk of necrotizing
7 enterocolitis in premature infants?

8 A. Yes.

9 Q. Okay. All right.

10 MS. ESFANDIARIFARD: I'd like to take
11 that down, Mr. Young. Thank you so much. I'd
12 like to mark as Exhibit -- I hope we're at 9. Can
13 someone correct me if I'm wrong?

14 MEETING TECHNICIAN: 9 is correct.

15 MS. ESFANDIARIFARD: Okay. I'd like to
16 mark as Exhibit 9 tab 11, Mr. Young, and I'll let
17 you go ahead and pull that up and share it.

18 (Bar-Yam Exhibit 9 was marked for
19 identification.)

20 BY MS. ESFANDIARIFARD:

21 Q. Okay, we're on the Mothers' Milk Bank
22 Northeast Web site again. Do you recognize that
23 logo and page?

24 A. I do.

25 MS. ESFANDIARIFARD: Thank you,

1 Mr. Young.

2 BY MS. ESFANDIARIFARD:

3 Q. It says milkbankNE.org/order-milk, for
4 the record. Do you recognize that,
5 Doctor Bar-Yam?

6 A. I do.

7 Q. Okay. Let's look at the page entitled
8 "order milk." Do you see that, Doctor Bar-Yam?

9 A. I do.

10 Q. Let's look to the next page. Let's
11 look under "order milk for your baby." It's a
12 very cute baby.

13 A. I never met one who wasn't.

14 Q. I know it, I'm with you. I'm with you,
15 Doctor Bar-Yam.

16 All right, "Order milk for your baby.
17 Donor milk is a limited medical resource. As a
18 small nonprofit committed to saving newborn lives,
19 our milk is prioritized for the most medically
20 fragile babies. Very often these babies are being
21 cared for in the NICU.

22 "We often have donor milk available for
23 families in the community to provide for their
24 newborn on a short-term basis. Thanks for your
25 understanding."

1 That's a true statement about the
2 Northeast Milk Bank's distribution and
3 availability, true?

4 A. Yes. That is not from 2013, this Web
5 site.

6 Q. No. Correct.

7 A. Okay.

8 Q. But that was a true statement in 2013
9 as well, true?

10 A. Yes.

11 Q. And 2014?

12 A. Correct.

13 Q. And when it says, "We often have donor
14 milk available for families in the community," the
15 community it's referring to is the Northeast
16 community, true; that's our community?

17 A. What it referred to was nonhospitalized
18 babies.

19 Q. Understood. But in the community of
20 the Northeast?

21 A. Mostly.

22 Q. And is it your testimony,
23 Doctor Bar-Yam, that this page "order milk for
24 your baby" is for nonhospitalized babies?

25 A. Yes.

1 Q. Okay. In that case, that's helpful.
2 I'd like to instead --

3 MS. ESFANDIARIFARD: We can take that
4 one down, Mr. Young. And I'd like to mark as
5 Exhibit 10 tab 35. And if you don't have that,
6 Mr. Young, just let me know.

7 MEETING TECHNICIAN: I've got it. Give
8 me just a second to rename it and post.

9 MS. ESFANDIARIFARD: Take your time.
10 Is that -- tab 36, my apologies.

11 MEETING TECHNICIAN: That one I don't
12 have.

13 MS. ESFANDIARIFARD: Let me shoot it
14 over to you. That might be my fault. One moment.

15 I just sent that, Mr. Young, so you
16 should have it in a moment.

17 MEETING TECHNICIAN: I will let you
18 know as soon as I get it.

19 MS. ESFANDIARIFARD: Thank you.

20 BY MS. ESFANDIARIFARD:

21 Q. And while we're waiting for that,
22 Doctor Bar-Yam, to send milk to a baby in a NICU,
23 the order has to come through a hospital?

24 A. Under most circumstances, that's true.

25 Q. And that's true in 2013 and 2014 as

1 well, right, to -- true?

2 A. On most -- in most circumstances, yes.

3 Q. Well, as I understand --

4 A. There are exceptions.

5 Q. I'm so sorry to interrupt you. As I
6 understand it, the hospital needs a purchase order
7 and a contract, right?

8 A. Milk ordered by the hospital does
9 require a purchase order and a contract, yes.

10 Q. And I'd like to pull up -- oh, yeah,
11 Mr. Young is working on it. Thank you.

12 (Bar-Yam Exhibit 10 was marked for
13 identification.)

14 BY MS. ESFANDIARIFARD:

15 Q. Okay. So we were just looking at a
16 page about ordering donor breast milk from the
17 Northeast Milk Bank as an individual. We can turn
18 to that next, but first I'd like to look at the
19 portion of the page about when a hospital orders
20 it.

21 Do you recognize this portion of the
22 Northeast Milk Bank's Web site?

23 A. Yes.

24 MS. ESFANDIARIFARD: Okay, so if we
25 scroll down a little bit. Okay. Scroll down

1 further.

2 BY MS. ESFANDIARIFARD:

3 Q. Okay, do you see where it says "placing
4 your orders" on the top of page 3?

5 A. Yes.

6 Q. It states, "Once your account is
7 established, your hospital can start ordering
8 milk." That's a true statement?

9 A. Yes.

10 Q. That was also true in 2013 and 2014?

11 A. Yes.

12 Q. Then let's look underneath that.

13 MS. ESFANDIARIFARD: Yes, under "order
14 deadlines."

15 BY MS. ESFANDIARIFARD:

16 Q. "Please try to place your order the day
17 before you want the milk to be shipped."

18 Did I read that right?

19 A. Yes.

20 Q. And is that -- if I'm understanding
21 this correctly, you order milk the day before you
22 want it to be shipped because it's processed the
23 next day and shipped that next night?

24 A. What do you mean by processed?

25 Q. Yeah, let me try that again.

1 So let's look at the next sentence.

2 "If you need an order shipped or couriered the
3 same day, you will need to contact us by 10 a.m.
4 that morning." Did I read that right?

5 A. Yes.

6 Q. Is that a true statement?

7 A. Yes.

8 Q. And was that true in 2013 and 2014?

9 A. By and large, yes.

10 Q. It wasn't faster in 2013 or '14, true?

11 A. No. It was not faster.

12 Q. Okay, so then here's my question. If
13 you want to get milk from Northeast Milk Bank
14 shipped or couriered the same day and you contact
15 them -- you have to contact Northeast Milk Bank by
16 10. So if you were to contact Northeast Milk Bank
17 after 10 it would not be shipped or couriered the
18 same day, right?

19 A. Again, there are always exceptions, but
20 by and large, that is true.

21 Q. Okay. So hypothetically,
22 Doctor Bar-Yam, if an order came to Northeast Milk
23 Bank at 1 p.m. on a weekday, it would go out -- it
24 would be shipped the next day; true?

25 A. By and large, yes.

1 Q. And then when it's shipped, it's
2 shipped overnight?

3 A. Yes.

4 Q. So the soonest it gets there is that
5 following day, the third day, true?

6 MR. ROJAS: Objection.
7 Mischaracterizes.

8 A. Okay, let me make sure I understand
9 what you're asking.

10 MR. ROJAS: Can we have the question
11 read back, please?

12 THE WITNESS: Yeah, I got lost in the
13 middle of the question somewhere.

14 MS. ESFANDIARIFARD: And it may be that
15 I asked a poor question, so let me try a clearer
16 one.

17 MR. ROJAS: I've just asked for the
18 question to be read back. Can we do that, please?

19 COURT REPORTER: Yes. Hold on one
20 second, please.

21 MS. ESFANDIARIFARD: So the soonest it
22 gets there is that following day, the third day,
23 true?

24 MR. ROJAS: I just want the question
25 read back. I'm entitled to have the question read

1 A. Correct.

2 Q. Okay. So then when it's processed and
3 sent the next day, we're on day two via FedEx. It
4 arrives at the hospital on day three because it's
5 overnight, right?

6 MR. ROJAS: Objection.

7 A. Correct.

8 BY MS. ESFANDIARIFARD:

9 Q. Okay. Sorry that I asked that so
10 poorly. And this was true in 2013 and 2014,
11 right? Mail wasn't any faster ten years ago?

12 A. Again, I'm not sure you're asking -- at
13 which end you're asking. In other words, if we
14 could -- if the order came in after 10 a.m. and we
15 could still get it out through FedEx, we would make
16 every effort to do so.

17 Q. Understood.

18 A. Some of it was dependent on, you know,
19 when the FedEx pick up was, or et cetera. There
20 are a lot of factors, but you can't put every
21 single factor on a Web site.

22 Q. Got it. So just so I understand,
23 Doctor Bar-Yam, even by and large if an order came
24 in after 10 a.m., it was processed and shipped the
25 next day.

1 back.

2 MS. ESFANDIARIFARD: I did. I was
3 reading it back for you, Jose. That was the
4 question, I was staring at the transcript.

5 MR. ROJAS: Oh, okay. All right.

6 MS. ESFANDIARIFARD: I'm just trying to
7 help you out.

8 MR. ROJAS: Thank you. I didn't know
9 if you were rephrasing or paraphrasing.

10 MS. ESFANDIARIFARD: No, I was just
11 reading.

12 BY MS. ESFANDIARIFARD:

13 Q. If you can answer that, Doctor Bar-Yam,
14 but I think I can ask a better question. Go
15 ahead.

16 A. Yeah, I -- you need to clarify.

17 Q. So I just want to make sure I get this
18 right. For an order to be couriered and shipped
19 the same day it has to be before 10 a.m., true?

20 A. Again, by and large, that's true.

21 Q. Okay. So if it's after 10 a.m. it's
22 done the next day, true?

23 A. By and large. Not always.

24 Q. Okay. And when it's processed and sent
25 the next day, that's via FedEx overnight, true?

1 There were times where in which, if you
2 could, an order that came in after 10 a.m. you
3 would still try to process and ship it that day?

4 A. Correct.

5 Q. But even in those instances,
6 Doctor Bar-Yam, it doesn't get to the hospital
7 until at earliest the next day, true?

8 A. Correct.

9 Q. And even in the earliest possible
10 situation, in those situations where you made an
11 exception, it would get to the hospital the next
12 afternoon, true?

13 A. In the morning. It goes overnight and
14 gets -- FedEx, their commitment is to get shipments
15 in by 10:30 in the morning.

16 Q. 10:30 in the morning. Okay, got it.

17 MS. ESFANDIARIFARD: All right, we can
18 take that down, Mr. Young. I'd like to mark as
19 Exhibit 11 tab 15.

20 (Bar-Yam Exhibit 11 was marked for
21 identification.)

22 BY MS. ESFANDIARIFARD:

23 Q. And I see Mr. Young shared it in the
24 chat. Okay. This is from the Northeast Milk
25 Bank's Web site. It's an article entitled

1 "Prematurity awareness month, a snapshot of
2 prematurity," and the byline, and what I mean by
3 that is the author, is you, Naomi Bar-Yam, Ph.D.,
4 right?

5 A. Correct.

6 Q. Do you recognize this as an article you
7 authored on the Northeast Milk Bank's Web site --

8 A. Yes, I do.

9 Q. -- in November of 2020?

10 A. I'm sorry. Yes.

11 Q. That's okay.

12 MS. ESFANDIARIFARD: We're doing good,
13 I think, Pam. I'll give us that.

14 Okay, let's scroll to the next page,
15 Mr. Young.

16 BY MS. ESFANDIARIFARD:

17 Q. Okay, I'd like to look at underneath
18 "global and US snapshot." "Preterm birth is any
19 baby born before 37 weeks gestation." That's a
20 true statement?

21 A. Correct.

22 Q. And if you look underneath that there's
23 a little box, "A very preterm baby is between 28
24 to 32 weeks gestation," right?

25 A. Correct.

1 Q. Okay. That's a true statement, right?

2 A. Yes.

3 Q. And if we look --

4 MS. ESFANDIARIFARD: Take that down,
5 Mr. Young --

6 BY MS. ESFANDIARIFARD:

7 Q. -- to the next page. Okay, you see
8 where it says, "43 percent of very preterm and 82
9 percent of extremely preterm babies do not
10 survive"?

11 A. I see that, yes.

12 Q. You wrote that?

13 A. I did.

14 Q. That's a true statement?

15 A. Yes.

16 MS. ESFANDIARIFARD: And then let's
17 look underneath that, if we scroll down a little
18 bit to "medical snapshot." Thank you.

19 If you could just focus in on the
20 "medical snapshot" section, Mr. Young.

21 BY MS. ESFANDIARIFARD:

22 Q. You wrote here, Doctor Bar-Yam, "A
23 brief look at the known causes of premature birth
24 sheds some light on these disparities."

25 Do you see that?

1 A. Yes, I do.

2 Q. You're talking about the disparities of
3 premature birth among different socioeconomic,
4 age, et cetera, areas, true?

5 A. Correct.

6 Q. Okay. So let's look at the, "according
7 to Doctor Bar-Yam" and your Web site, look at some
8 of the known causes of premature birth. You have
9 on here "age and spacing," right?

10 A. Correct.

11 Q. So being a teen is a known cause of
12 having a premature birth?

13 A. Correct.

14 Q. And under "lifestyle" you have
15 "smoking, alcohol, drugs, excess physical work,
16 violence." Those are all known causes of
17 premature birth, true?

18 A. Risk factors.

19 Q. Those are all risk factors --

20 A. Yeah.

21 Q. -- they increase -- so let me ask that
22 again. According to your article, Doctor Bar-Yam,
23 smoking, alcohol, drugs, excess physical work, and
24 violence increase the risk of premature birth?

25 A. Correct.

1 Q. And when you refer to smoking, are you
2 referring to smoking cigarettes?

3 A. Yes.

4 Q. And then at the bottom you have
5 "multiple factors lead to increased risk." Do you
6 see that?

7 A. Yes.

8 Q. Is what that means, Doctor Bar-Yam, is
9 if you have multiple of --

10 MR. ROJAS: I'm sorry to interrupt. I
11 was objecting, and I was on mute. I want to make
12 clear that I'll move to strike those questions and
13 answers relating to risk factors and causes, and I
14 can leave it as a standing objection, but
15 obviously this witness is not here as an expert
16 witness.

17 MS. ESFANDIARIFARD: You have a
18 standing objection to this exhibit, Mr. Rojas.

19 MR. ROJAS: Thank you.

20 BY MS. ESFANDIARIFARD:

21 Q. And so let me start that question
22 again. You have here "multiple factors lead to
23 increased risk." Did I read that right?

24 A. Correct.

25 Q. And do I understand that correctly to

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1 mean that if an individual has multiple of these
2 factors, then they have an even -- an even more
3 increased risk of premature birth, true?

4 MR. ROJAS: Objection.

5 A. Right.

6 BY MS. ESFANDIARIFARD:

7 Q. And under maternal conditions you also
8 have hypertension, undernutrition, obesity,
9 vitamin deficiencies, depression, UTI, STD and
10 diabetes, right?

11 A. Yes.

12 Q. Those are all maternal conditions that
13 increase the mother's risk for a premature birth,
14 true?

15 A. To my knowledge.

16 MS. ESFANDIARIFARD: Let's bring down
17 this --

18 MR. ROJAS: And just for the record, I
19 think this is clear, but my objections were not
20 only to the exhibit, but to any questions relating
21 to the exhibit. That was the standing objection.

22 MS. ESFANDIARIFARD: I understood your
23 objection, Mr. Rojas, to be to this portion of the
24 deposition which concerns Exhibit 11.

25 MR. ROJAS: Thank you.

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1 BY MS. ESFANDIARIFARD:

2 Q. Let's turn to "why prematurity
3 matters." Okay, let's look at the second
4 paragraph, Doctor Bar-Yam.

5 You wrote, "Fetal development is a
6 wondrous and delicate process meant to last nine
7 months. Premature birth affects all of a baby's
8 vital systems. Respiratory (lungs at 34 weeks are
9 half their size at term); cardiovascular,
10 gastrointestinal, immunologic, brain and central
11 nervous system, hearing, vision."

12 Did I read that right, Doctor Bar-Yam?

13 A. You did.

14 Q. And that's a statement you wrote on the
15 Northeast Milk Bank's Web site regarding on how
16 premature birth affects a baby's vital systems,
17 right?

18 A. I did write that, correct.

19 Q. And it's a true statement?

20 A. Yes.

21 Q. And specifically it's true that
22 premature birth affects the GI system of the
23 infant, true, the gastrointestinal?

24 A. It does.

25 Q. And you did research and you have

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1 citations in your articles when you did write
2 these statements, true?

3 A. I did have citations, correct. This
4 was not a scholarly article.

5 Q. Understood.

6 A. So it is not cited the way a scholarly
7 article would have been.

8 Q. But you stand by this statement, true,
9 Doctor Bar-Yam?

10 A. Yes.

11 MS. ESFANDIARIFARD: Okay, we can take
12 that down. I'd like to turn to tab 16 and mark it
13 as Exhibit 12.

14 (Bar-Yam Exhibit 12 was marked for
15 identification.)

16 MS. ESFANDIARIFARD: All right, I see
17 it's in the chat.

18 BY MS. ESFANDIARIFARD:

19 Q. Again, Doctor Bar-Yam, we're looking at
20 an article on the Northeast Milk Bank's Web site
21 at milkbankNE.org, and the article is entitled
22 "Adjusted Age, Adjusted Life, Prematurity
23 Awareness Over the Lifespan. 11/23/21, Naomi
24 Bar-Yam, Ph.D., perspectives."

25 Do you see that?

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1 A. Yes, I do.

2 Q. This is an article you wrote for the
3 Northeast Milk Bank's Web site on November 23,
4 2021, true?

5 A. True.

6 MS. ESFANDIARIFARD: Let's look at the
7 content of the first paragraph, Mr. Young.

8 BY MS. ESFANDIARIFARD:

9 Q. It says, "November is prematurity
10 awareness month." And if we look at the last
11 sentence in the first paragraph, "Prematurity does
12 not end when babies go home from the NICU."

13 Did I read that right?

14 MR. ROJAS: Objection.

15 A. Yes.

16 BY MS. ESFANDIARIFARD:

17 Q. That's a true statement?

18 A. Yes.

19 Q. Fetal growth occurs over 39 to 40 weeks
20 of pregnancy. When babies are born early, this
21 growth is incomplete. That's a true statement?

22 MR. ROJAS: Objection.

23 A. Yes.

24 BY MS. ESFANDIARIFARD:

25 Q. Development is very different when you

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1 have to breathe, eat, fight germs and keep warm on
2 your own than when those services are part of the
3 in-utero package? That's a true statement?

4 MR. ROJAS: Objection.

5 A. Yes.

6 MS. ESFANDIARIFARD: You can have a
7 standing objection to this exhibit if you would
8 like, Mr. Rojas.

9 MR. ROJAS: Yes, but standing objection
10 to both the exhibit and any questions and answers
11 relating to while this exhibit is up.

12 MS. ESFANDIARIFARD: Understood.

13 BY MS. ESFANDIARIFARD:

14 Q. And, again, you wrote these words,
15 Doctor Bar-Yam, and you stand by them?

16 A. I did write these words, yes.

17 Q. And you do stand by them today?

18 A. Yes.

19 Q. Okay.

20 MS. ESFANDIARIFARD: Let's turn to the
21 next portion under preterm birth as a chronic
22 condition. Can you scroll down? Mr. Young?

23 Thank you. There we go.

24 BY MS. ESFANDIARIFARD:

25 Q. You see this section of the article on

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1 Q. Very preterm birth. Understood, okay.

2 So you would agree, Doctor Bar-Yam,
3 that a very preterm baby should be thought of as
4 an infant with a chronic condition that requires
5 long-term follow up, true?

6 A. A long-term condition. The difference
7 between chronic and long term is out of my
8 wheelhouse. I was quoting someone else.

9 Q. A long-term condition, true?

10 A. Uh-hum. Yes.

11 Q. Is that a yes?

12 A. Yes.

13 Q. Okay.

14 MS. ESFANDIARIFARD: We can take that
15 down, Mr. Young. Let's see here. I'd like to
16 mark as Exhibit 13 tab 35.

17 (Bar-Yam Exhibit 13 was marked for
18 identification.)

19 BY MS. ESFANDIARIFARD:

20 Q. Do you see here, Doctor Bar-Yam, we've
21 marked as Exhibit 12 an article on the Northeast
22 Milk Bank's Web site authored by yourself, Naomi
23 Bar-Yam, Ph.D., entitled "Breastfeeding and Work,
24 Let's Make it Work," August 4, 2015?

25 A. Correct.

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1 the Northeast Milk Bank Web site that you
2 authored, Doctor Bar-Yam, entitled "Preterm Birth
3 as a Chronic Condition"?

4 A. Uh-hum. Yes, I do.

5 Q. Let's read the first sentence. "As
6 more babies are born earlier and living to become
7 healthy and productive adults, 'preterm birth
8 should be thought of as a chronic condition that
9 requires long-term follow up...doctors are not
10 used to seeing them, but they increasingly will.'"

11 Did I read that right?

12 A. You did.

13 Q. And you're quoting here a Doctor Casey
14 Crump who is a family physician and
15 epidemiologist, true?

16 A. Correct.

17 Q. And you would agree, Doctor Bar-Yam
18 that preterm birth should be thought of as a
19 chronic condition that requires long term follow
20 up, true?

21 A. Not all preterm births, but very
22 preterm births in many cases, yes.

23 Q. Was the term that you used varied? I
24 just want to make sure I heard it right.

25 A. Very preterm births.

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1 Q. You wrote this article for the
2 Northeast Milk Bank's Web site, true?

3 A. Yes, I did.

4 Q. Okay.

5 MS. ESFANDIARIFARD: Let's turn to the
6 third paragraph I believe on the next page. Okay,
7 the one starting with "new mothers."

8 MR. ROJAS: May I get a standing
9 objection here to the exhibit and questions and
10 answers.

11 MS. ESFANDIARIFARD: Having not heard
12 the questions yet? Sure, Mr. Rojas.

13 MR. ROJAS: I'm looking ahead to what
14 it says.

15 Why don't I just make clear. Again,
16 this witness has not being asked to testify as an
17 expert witness, has not been disclosed as an
18 expert witness, and the document is littered with
19 hearsay, so I kind of see where it's going.

20 If you'll allow a standing objection,
21 then that's great. If you won't, then I'll object
22 each time.

23 MS. ESFANDIARIFARD: Mr. Rojas, you
24 have a standing objection.

25 MR. ROJAS: Great.

1 BY MS. ESFANDIARIFARD:

2 Q. Let's turn to the first sentence. "At
3 the beginning of time and until a couple of
4 decades ago, many of these babies did not
5 survive."

6 And this is referring to preterm
7 babies?

8 A. Yes.

9 Q. Okay. And this article, again, was
10 2015. This was a true statement in 2015?

11 A. Yes.

12 Q. "Modern science and medicine have
13 advanced so that many very premature babies
14 survive and thrive. Oxygen, feeding tubes,
15 medications, monitoring, care, love, dedication
16 and patience all help these babies grow."

17 That's a true statement?

18 A. Yes.

19 Q. "Incubators are distant seconds to
20 mother's wombs, but serviceable." True?

21 A. True.

22 Q. "While these babies cannot return to
23 the safety of their mother's womb and nutrients
24 predigested through the umbilical cord, they can
25 receive human milk, even while their own mother's

1 supply is still insufficient." True?

2 A. True.

3 Q. And then it concludes this paragraph by
4 noting, "Human milk is second only to nutrition
5 through the umbilical cord. It's nutritional,
6 immunologic and growth properties save lives,
7 promote growth and support positive short and
8 long-term health and developmental outcomes."

9 That's a true statement?

10 A. True.

11 MS. ESFANDIARIFARD: Okay, we can take
12 that down. Let's mark as Exhibit 13 --

13 MEETING TECHNICIAN: 14.

14 MS. ESFANDIARIFARD: 14, thank you --
15 tab 19.

16 (Bar-Yam Exhibit 14 was marked for
17 identification.)

18 BY MS. ESFANDIARIFARD:

19 Q. All right, this is from Keriton.com.
20 And if we look at the top, "A Preemie's 'breast'
21 Friend, Naomi Bar-Yam." Do you see that?

22 A. Yes, I do.

23 Q. And do you see how it says donor bank
24 February 2012? This is an article from February
25 2012.

1 A. I see it, yes.

2 Q. And let's look at the next paragraph.
3 This is an interview you gave. It says, "An
4 interview with the founder and president of
5 Mothers' Milk Bank Northeast."

6 That's you, right, in 2012?

7 A. Yes. I was not the president, but that
8 was their mistake.

9 Q. But it says, "Recently Keriton's own
10 clinical expert and lactation consultant, Kelly
11 Convery, had the lucky chance to chat with Naomi
12 Bar-Yam, the president of human milk banking
13 association of North American, HMBANA, and founder
14 of Mothers' Milk Bank Northeast, MMBNE."

15 Do you see that?

16 A. Yes, I see it.

17 Q. And Doctor Bar-Yam, this was an
18 interview you gave in 2012 with a Ms. Convery at
19 Keriton, right?

20 A. It must have been, although I'm
21 wondering -- it's a little off. I was not
22 president of HMBANA in 2012, so I'm not sure what
23 that's about.

24 Q. Sorry to interrupt you. Maybe that's
25 February 12th as opposed to 2012?

1 A. That would make more sense.

2 Q. And it was when you were president of
3 HMBANA?

4 A. Presumably, yes.

5 Q. And had already founded Mothers' Milk
6 Bank Northeast?

7 A. Correct.

8 Q. Let's see here. Let's see if I can
9 click on -- and let's look at -- I'm just going to
10 upload it on my page 2.

11 All right. And looking at the first
12 question -- sorry, let's turn to the fourth
13 question. One, two -- there we go.

14 The question was, "What makes HMBANA
15 different from informal milk sharing communities
16 like human milk for human babies."

17 Do you see that?

18 A. I do.

19 MR. ROJAS: Objection.

20 BY MS. ESFANDIARIFARD:

21 Q. Okay. And if you look at the second
22 paragraph, this is your -- a part of your answer,
23 Doctor Bar-Yam?

24 MR. ROJAS: Sorry, I'll just have a
25 standing objection here, unless you'd rather I

1 object individually.

2 MS. ESFANDIARIFARD: Yes. Standing
3 objection to form?

4 MR. ROJAS: Do you want me to list out
5 all of the objections?

6 MS. ESFANDIARIFARD: Go ahead,
7 Mr. Rojas.

8 MR. ROJAS: What's that?

9 MS. ESFANDIARIFARD: You can have a
10 standing objection.

11 MR. ROJAS: Okay. Thank you.

12 BY MS. ESFANDIARIFARD:

13 Q. Let's look at the second paragraph.
14 "Unlike informal milk sharing, HMBANA milk banks
15 have oversight, certifications, protective
16 measures, and safety regulations, including
17 pasteurization and culturing milk for bacteria."

18 That's a true statement, right?

19 A. Yes.

20 Q. Let's turn to the question, "What do
21 you see as challenges to getting donor milk in
22 more NICUs." So it's right at the bottom of the
23 page.

24 Okay. Do you see here the question you
25 were asked by Keriton's Kelly Convery is, "What do

1 you see as challenges to getting donor milk in
2 more NICUs?"?

3 A. I do.

4 Q. And your answer includes, if you look
5 at the second sentence, "The biggest concern we
6 hear right now is that very small babies don't
7 grow as well on donor milk as they do on formula,
8 and that milk needs to be fortified."

9 Did I read that correctly?

10 A. You did.

11 Q. And that's a true statement, a concern
12 you would hear when you were working with HMBANA,
13 was that very small babies don't grow well on
14 donor milk as they do on formula, and the donor
15 milk needs to be fortified, true?

16 A. That was a concern that I heard, yes.

17 Q. And did you also hear that when you
18 were at Northeast Milk Bank?

19 A. Yes, I did.

20 Q. And you go on to say, "But when you're
21 talking about a baby born at 25 weeks, how are
22 they supposed to grow when they come early? If
23 they weren't born premature, they would still be
24 getting everything through the cord."

25 That's a true statement, right?

1 A. Correct.

2 Q. And then you go on to ask, "How do you
3 feed and grow babies who should be getting
4 everything through the cord?"

5 And what you're referring to there, if
6 I understand you correctly, Doctor Bar-Yam, is the
7 umbilical cord --

8 A. Correct --

9 Q. -- which is --

10 A. Sorry.

11 Q. No, that's okay. Let's look at the
12 next sentence. "What we do know is that human
13 milk matters and works better for these small
14 babies." That's a true statement?

15 A. Yes.

16 Q. You knew that in 2013?

17 A. Yes.

18 Q. You knew that in 2014?

19 A. Yes.

20 Q. You know that today?

21 A. Yes.

22 Q. You go on to say that, "One of the
23 biggest things we worry about for fragile babies
24 is NEC, necrotizing enterocolitis, which is a very
25 serious gut infection that has a significant

1 morbidity and mortality rate."

2 Did I read that right?

3 A. Yes, you did.

4 Q. And that's a true statement. That's
5 something you worried about and neonatologists
6 worried about, NEC, for premature infants, right?

7 A. Correct.

8 Q. You shared that worry in 2013, true?

9 A. Yes.

10 Q. You shared that worry in 2014, true?

11 A. Correct.

12 Q. And then you go on to say, "It almost
13 exclusively affects premature babies."

14 That's a true statement, NEC almost
15 exclusively affects premature babies, right?

16 A. Correct.

17 Q. "Formula-fed babies are considered more
18 likely to get NEC because they don't have the
19 protective factors of human milk." And that's a
20 true statement, correct?

21 A. That's the assumption -- yes. Once
22 again, that is out of my expertise, the details,
23 but that -- that is the understanding, yes.

24 Q. It was --

25 A. My understanding.

1 Q. Okay, let me try it again. It was your
2 understanding when you gave this interview that
3 formula-fed babies are considerably more likely to
4 get NEC because they don't have the protective
5 factors of human milk. That's what you understood
6 to be true, right?

7 A. That was my understanding.

8 Q. You understood that in 2013?

9 A. Yes.

10 Q. You understood that in 2014?

11 A. Yes.

12 Q. You understand that today, sitting here
13 today?

14 A. I expect it's a little -- yes, I do.
15 Yeah. It's a little more nuanced, but, yeah, let's
16 go with that.

17 Q. I'm sorry, I think I had a hard time
18 hearing that. You understand that statement to be
19 true today, right?

20 A. That is my understanding.

21 MS. ESFANDIARIFARD: And we can take
22 that portion down.

23 BY MS. ESFANDIARIFARD:

24 Q. As I understand it, Doctor Bar-Yam,
25 when we're talking about human milk being

1 misunderstanding --

2 A. Correct. That's correct.

3 Q. And just for the record, can you tell
4 us what your specific concern is, if you don't
5 mind?

6 A. That -- I'm trying to think of how to
7 say this in the best possible way.

8 Covid is still a very serious short and
9 long-term disease, and we work very hard to protect
10 ourselves and our family members, some of whom are
11 immunocompromised from exposure.

12 Q. Understood, Doctor Bar-Yam. You have
13 not been traveling on commercial airplanes since
14 that time?

15 A. That's right.

16 Q. Okay.

17 A. That's right.

18 MS. ESFANDIARIFARD: Okay, I'd like to
19 mark as Exhibit, I think it will be, 15. Tab 5.

20 MEETING TECHNICIAN: Tab 5, is that
21 right?

22 MS. ESFANDIARIFARD: Yes, tab 5. I'm
23 sorry if I spoke low.

24 (Bar-Yam Exhibit 15 was marked for
25 identification.)

1 protective, donor milk is a little less protective
2 than a mother's own milk when it comes to
3 protecting against diseases like necrotizing
4 enterocolitis, right?

5 A. Yes, somewhat less protective.

6 Q. And that's including because donor milk
7 is pasteurized; true?

8 A. Correct.

9 MR. ROJAS: Are we still on this
10 exhibit?

11 MS. ESFANDIARIFARD: That was -- I'm
12 not asking about that exhibit. I'm just asking a
13 question.

14 MR. ROJAS: Can we pull it down, then,
15 if you're done with it? Just so I can see better.

16 MS. ESFANDIARIFARD: Okay.

17 BY MS. ESFANDIARIFARD:

18 Q. Changing topics a little bit,
19 Doctor Bar-Yam. I understand, I believe, from
20 Mr. Rojas that -- and yourself, that you'd like to
21 appear remotely for the trial this month, is that
22 right?

23 A. Correct.

24 Q. And just so I understand it, that's due
25 to Covid -- Covid concerns? Or am I

1 MR. ROJAS: While we wait for that, I
2 think it's clear, but there were a few questions
3 while Exhibit 14 was still up, and my standing
4 objection was intended to cover those as well. To
5 the extent it wasn't clear, I just want to note my
6 objection now.

7 MS. ESFANDIARIFARD: Okay, I will reask
8 those questions without the exhibit up. So take
9 that down as well, Mr. Young.

10 BY MS. ESFANDIARIFARD:

11 Q. Doctor Bar-Yam, would you agree that
12 donor milk is less protective against diseases
13 like necrotizing enterocolitis than mother's own
14 milk?

15 MR. ROJAS: Objection.

16 A. That it is less protective than
17 mother's own milk. Yes.

18 BY MS. ESFANDIARIFARD:

19 Q. And the reason -- one of the reasons
20 that donor milk is less protective against NEC
21 than mother's own milk is because donor milk is
22 pasteurized, right?

23 MR. ROJAS: Objection.

24 A. That is one of the reasons, correct.

25 BY MS. ESFANDIARIFARD:

1 Q. Another reason is because it's pooled
2 term milk, often, true?

3 MR. ROJAS: Objection.

4 A. I seem to have lost you.

5 BY MS. ESFANDIARIFARD:

6 Q. Can you hear me?

7 A. I'm sorry, you froze in the middle.
8 Say that again?

9 Q. That's okay. Another reason that donor
10 milk is less protective than mother's own milk
11 when it comes to protecting against a disease like
12 necrotizing enterocolitis is because it often is
13 pooled term milk, true?

14 MR. ROJAS: Objection.

15 A. I don't know that that's the case.

16 BY MS. ESFANDIARIFARD:

17 Q. Okay. But you agree with me that donor
18 milk is less protective than mom against
19 necrotizing enterocolitis, true?

20 MR. ROJAS: Objection.

21 A. Yes, I would agree with that.

22 BY MS. ESFANDIARIFARD:

23 Q. Now let's go back to Exhibit 15, which
24 was tab 5.

25 All right. Do you recognize this,

1 Doctor Bar-Yam, as the responses you gave to our
2 subpoena for documents?

3 A. Yes, I do.

4 Q. And these responses are true and
5 accurate?

6 A. Yes, they are.

7 Q. And in response to all of our requests,
8 except for the one regarding communications with
9 plaintiff counsel which I'll turn to next, you
10 indicated that you don't have access to any of
11 these documents, and to the extent they exist they
12 would be with the Northeast Milk Bank, right?

13 A. Correct.

14 Q. And specifically indicated,
15 Doctor Bar-Yam, that you have not had possession
16 of them since March 2020, which as I understand is
17 when you stepped down from Northeast Milk Bank as
18 the director?

19 A. Correct.

20 Q. Okay.

21 MS. ESFANDIARIFARD: Turning to the
22 bottom of page 4, Mr. Young -- sorry, go up a
23 little bit. Maybe bottom of page 3. Scroll up.

24 There we go, on the bottom,
25 "communications with plaintiff's counsel." Let's

1 zoom in on that.

2 BY MS. ESFANDIARIFARD:

3 Q. We asked for, "Communications with
4 plaintiff's counsel or with respect to your
5 potential testimony in this matter any individuals
6 retained as expert witnesses by plaintiff's
7 counsel in the NEC litigation."

8 Did I read that right?

9 A. Yup. Yes.

10 Q. And you responded, "I have no knowledge
11 of individuals retained as expert witnesses in any
12 NEC litigation." That's a true statement?

13 A. That's true.

14 Q. And then you wrote, "Attached is the
15 initial e-mail from Mr. Rojas and my response.
16 Other e-mails involved scheduling our Zoom
17 meeting. Other contact have been brief and by
18 phone." Did I read that right?

19 A. Correct.

20 Q. And that's a true and accurate
21 statement as you sit here today?

22 A. Yes.

23 MS. ESFANDIARIFARD: And if we scroll
24 down, Mr. Young, you can see the e-mail from
25 Mr. Rojas.

1 BY MS. ESFANDIARIFARD:

2 Q. That's the e-mail, right? Do you
3 recognize it?

4 A. Yes, I do.

5 Q. And then your response is directly
6 underneath about -- the next day. He wrote to you
7 on March 7, 2025 at 7:56, and you responded on
8 March 8 at 8:51 Eastern, right?

9 MR. ROJAS: Objection.

10 A. Yes.

11 BY MS. ESFANDIARIFARD:

12 Q. So when you wrote in your response
13 that, "other contact had been brief and by phone,"
14 can you please tell us about that other contact?

15 MR. ROJAS: Objection.

16 A. Could you clarify what you want to know
17 about it?

18 BY MS. ESFANDIARIFARD:

19 Q. Sure. Everything that you remember
20 about the other contact you've had with
21 plaintiff's counsel. And if you'd like, we can
22 start with how many times have you spoken on the
23 phone with Mr. Rojas?

24 A. I don't remember exactly. Two or
25 three. I don't remember exactly.

1 Q. More than five times?

2 MR. ROJAS: Witness said two or three.

3 A. Yeah, I think it's two or three times.

4 Sorry.

5 BY MS. ESFANDIARIFARD:

6 Q. That's okay, let me ask it again. You
7 stated that you don't remember exactly, two or
8 three times. Is it possible you've spoken more
9 than three times?

10 A. I suppose it's possible. I would just
11 have to really search my brain and phone records.
12 I don't remember exactly. It wasn't very --

13 Q. Is it possible you've spoken to
14 Mr. Rojas or any other plaintiff's counsel more
15 than five times?

16 A. I don't think it was more than five
17 times, no.

18 Q. So is it fair to say you've spoken to
19 Mr. Rojas and other plaintiff's counsel somewhere
20 between two and five times?

21 A. I suppose, sure.

22 Q. We may be in touch with you later to
23 get a better answer to that, if you need to check
24 your cell phone or phone log, so I reserve the
25 right to do that at this time.

1 When you spoke with Mr. Rojas --

2 MR. ROJAS: Obviously I just want to
3 state an objection, to the extent there is an
4 effort to do that. Go ahead.

5 BY MS. ESFANDIARIFARD:

6 Q. And when you spoke -- was it always
7 Mr. Rojas you were talking to, or other folks?

8 A. I spoke directly with him. There was
9 no one else I spoke with directly.

10 Q. Did you speak indirectly with other
11 people?

12 A. No. There was someone else on the
13 initial conversation who was in the room, but I did
14 not speak to her directly.

15 Q. Do you recall who that individual was?

16 A. I wrote down her name, but I don't
17 remember it at the moment.

18 Q. Was it an attorney for plaintiff's
19 counsel, that you recall? Or someone else
20 entirely?

21 A. I don't think she was an attorney, but
22 I couldn't say for sure. I don't remember exactly.

23 Q. You don't remember her name, but you
24 said you wrote it down somewhere?

25 A. I did jot it down. I would have to dig

1 it out.

2 MS. ESFANDIARIFARD: We reserve the
3 right to ask for that information as well.

4 MR. ROJAS: Note an objection.

5 BY MS. ESFANDIARIFARD:

6 Q. Let's talk about these two to five
7 conversations. Can you please tell us what you
8 discussed, to the best of your recollection
9 sitting here today, with plaintiff's counsel?

10 A. The conversations were about similar to
11 some of the questions that you've been asking,
12 although it was asked in a different way.

13 But it was questions about kind of how
14 milk banking works, and how we might have dispensed
15 milk to a hospital under various circumstances, and
16 how we might dispense milk to an individual who had
17 a hospitalized baby under certain circumstances.
18 Like background.

19 Q. Understood. Were there topics you
20 discussed with Mr. Rojas or other plaintiff's
21 counsel in the times that you spoke with them that
22 we haven't covered today?

23 A. I don't think so, but I'd really have
24 to go back and scratch my brain a little bit to
25 remember, but I don't think so.

1 Q. Do you have notes from these
2 conversations?

3 A. I took some notes. But, again, I don't
4 even know if I have them here. I would have to
5 see -- I think I do, but I'm not sure.

6 Q. It's possible they're in the room with
7 you right now?

8 A. It's possible, but I can't -- couldn't
9 guarantee that.

10 Q. And how -- what was the length of these
11 two to five conversations, approximately, total?

12 A. Total?

13 Q. Uh-hum.

14 A. Okay, now you're asking for arithmetic.
15 I would say -- and this is -- maybe an hour and a
16 half, maybe two hours, more than two total,
17 including scheduling things and stuff.

18 Q. So with respect to the phone
19 conversations that you had with Mr. Rojas that
20 were about two to five times, they were more than
21 two hours?

22 A. No, I would say all -- you asked me
23 total.

24 Q. Yup. You said maybe two, more than two
25 total. I'm just trying to understand for the

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1 record.

2 MR. ROJAS: I don't think that's an
3 accurate characterization of the testimony.

4 A. Yeah, I don't think that's what I said.

5 BY MS. ESFANDIARIFARD:

6 Q. Okay, let's ask it again,
7 Doctor Bar-Yam. The total amount of time you
8 spoke to Mr. Rojas and plaintiff's counsel was
9 approximately two hours?

10 A. Yeah, I would say that.

11 MR. ROJAS: And, also, she did not
12 speak to any other plaintiff's counsel, she
13 testified to that. The question mischaracterizes
14 testimony.

15 BY MS. ESFANDIARIFARD:

16 Q. Doctor Bar-Yam, when I asked you
17 earlier about your conversations with Mr. Rojas,
18 you stated that there was another person on the
19 phone of the first call?

20 A. There was another person on the call.
21 I've got to remember for a second. Give me a
22 second here. I think she identified herself as a
23 paralegal. Is that right? Is that a word? Did I
24 make that up?

25 Q. Understood. So for the conversations

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1 you had with Mr. Rojas or a paralegal, they
2 totaled about two hours approximately, true?

3 A. Correct.

4 Q. Okay.

5 A. And the paralegal -- I didn't actually
6 speak with -- I wish I could remember her name. I
7 don't -- I didn't actually speak with her, but she
8 was in attendance on the call.

9 Q. Got it. And Doctor Bar-Yam, have we
10 covered the topics that you intend to testify
11 about when you appear at trial?

12 A. I would assume so. Probably and then
13 some. I would assume there are topics we covered
14 today that I would not be testifying about.

15 Q. What are some of the topics you
16 anticipate testifying about that we haven't
17 covered today?

18 A. No, the other way around. I think
19 there are topics that we covered today that I will
20 probably not testify about.

21 Q. Understood.

22 A. Because they're not really in my
23 wheelhouse, even if I had written blogs about them.

24 Q. Got it. So we did not miss any topics
25 that you intend to testify about, right? I have

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1 talked to you about everything that you intend to
2 testify about, true?

3 A. To my knowledge. I mean, again, I
4 don't know that I have control over what I testify
5 about, but to my knowledge, I think we covered it.

6 Q. Did Mr. Rojas ask you about any topics
7 I haven't covered today?

8 A. Not that I can think of.

9 Q. Did you provide him with any
10 information you didn't provide me today?

11 A. I think the only thing was about how it
12 might be possible for a hospitalized baby to get
13 milk that was not ordered by the hospital. I think
14 that's the only thing that -- that we went over a
15 little bit.

16 Q. And I believe I asked this earlier, but
17 let me just ask now for the record. Sitting here
18 today you cannot think of a single instance in
19 2013, '14 or otherwise, in which you sent donor
20 milk from the Northeast Milk Bank to an
21 individual, including an outpatient, in the state
22 of West Virginia, true?

23 MR. ROJAS: Objection. I believe that
24 mischaracterized the testimony, but go ahead.

25 MS. ESFANDIARIFARD: I'm asking again

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1 now, so I'm going to ask my question.

2 MR. ROJAS: Right, so the Seeger rules,
3 you can't mischaracterize testimony and then ask a
4 question. So I just want to note that I believe
5 that that question mischaracterizes the previous
6 testimony. But you're free to ask a question,
7 just not mischaracterize the testimony.

8 MS. ESFANDIARIFARD: I disagree with
9 that, but I will restate my question.

10 BY MS. ESFANDIARIFARD:

11 Q. Doctor Bar-Yam, sitting here today, you
12 cannot think of a single instance in 2013, 2014 or
13 otherwise in which you sent donor milk from the
14 Northeast Milk Bank to an individual, including an
15 outpatient individual, in the state of West
16 Virginia, true?

17 A. I cannot think of one, no. Again, I
18 don't have access to the records, but I can't think
19 of one.

20 Q. Do you understand, Doctor Bar-Yam, that
21 we asked Northeast Milk Bank for records of any
22 instances in which donor milk was sent to West
23 Virginia, and they indicated that they have no
24 such records?

25 A. Okay. I did not know that, but.

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1 MS. ESFANDIARIFARD: Let's take one
2 other short break, and I think I just need to take
3 a break and look at my notes, and I might be able
4 to wrap up pretty soon. Say five minutes.

5 THE WITNESS: That's a deal.

6 MS. ESFANDIARIFARD: Thank you.

7 (Recess taken.)

8 MS. ESFANDIARIFARD: So we're back on
9 the record, Doctor Bar-Yam. And I'd like to just
10 introduce what will be I think Exhibit 16. I know
11 Mr. Young told me, but -- yes, 16.

12 MEETING TECHNICIAN: Yes, that's what
13 you said, right.

14 MS. ESFANDIARIFARD: And these are an
15 attachment to the responses from Northeast Milk
16 Bank's responses to our discovery. You should
17 have it, Mr. Rojas, but we'll go ahead and put it
18 in the chat and show it on the screen.

19 (Bar-Yam Exhibit 16 was marked for
20 identification.)

21 BY MS. ESFANDIARIFARD:

22 Q. I just want to look at this one part
23 right here. Okay. If you see here under 1,
24 "procedure." Do you see that? Doctor Bar-Yam?

25 A. I'm sorry, you're asking me? Yes, I

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1 see that.

2 Q. Sorry. It indicates from Northeast
3 Milk Bank's responses by attaching a procedure to
4 our requests that hospitalized infants are given
5 priority over nonhospitalized infants, NICU units
6 are given priority over well baby units,
7 inpatients are served by the hospital, and
8 hospitals typically require a hospital purchase
9 order.

10 And I believe we discussed this
11 earlier, but I just wanted to go over with it and
12 ensure that this is accurate with your memory, and
13 that is that inpatients that are served by
14 hospitals typically require a hospital purchase
15 order, true?

16 A. Inpatients that are served by
17 hospitals, yes.

18 Q. Inpatients that are served by hospitals
19 typically require a hospital purchase order, true?

20 A. Correct.

21 Q. Okay.

22 MS. ESFANDIARIFARD: And then we can
23 take that down, Mr. Young.

24 BY MS. ESFANDIARIFARD:

25 Q. And the timelines we already discussed

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1 earlier this morning, or maybe it's already noon
2 over there, Doctor Bar-Yam, but the timelines we
3 discussed for orders of donor milk to come in, get
4 shipped out and arrive at the hospitals, the same
5 would be true whether an order comes from an
6 individual or a hospital, right?

7 A. Oh, yes. Correct.

8 Q. All right. And inpatients are served
9 by the hospital, right?

10 A. What do you mean by inpatients are
11 served by the hospital?

12 Q. Patients, when we were talking about --

13 MS. ESFANDIARIFARD: Sorry, let's pull
14 that document back up, Exhibit 16.

15 BY MS. ESFANDIARIFARD:

16 Inpatients are served by the hospital.
17 That's true?

18 A. Yes. And, again, every rule has
19 exceptions, but that is generally the case.

20 MS. ESFANDIARIFARD: Okay, perfect. I
21 think we can break now for lunch. So we can go
22 off the record.

23 (Recess taken.)

24 EXAMINATION

25 BY MR. ROJAS:

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1 Q. Doctor, my name is Jose Rojas, I know
2 we've spoken a couple of times. We've never met
3 in person, have we? You might be muted.

4 A. Sorry. No, we have not.

5 Q. And have we spoken or communicated at
6 all today?

7 A. No.

8 Q. All right. And you were asked some
9 questions of a medical and scientific nature. I
10 believe your words were that some of the stuff was
11 not in your wheelhouse. Can you elaborate on
12 that, what you meant by that?

13 MS. ESFANDIARIFARD: Object to form.

14 THE WITNESS: I'm sorry?

15 MS. ESFANDIARIFARD: Objection for the
16 record, Doctor Bar-Yam. I object to the form.

17 THE WITNESS: Okay.

18 A. At this -- I mean, I guess I put myself
19 in terms of the -- you know, the research and the
20 details of some of the questions that were asked, I
21 would -- I guess I would characterize myself maybe
22 as an educated layman, but I am not -- I am not a
23 neonatologist, I am not a scientific researcher.
24 My Ph.D. is not in the sciences, it's in the social
25 sciences.

1 So I can read literature, but I'm not
2 by any means an expert in the nuances of this
3 research and of these topics.

4 BY MR. ROJAS:

5 Q. So you'd agree you're not an expert in
6 the field of neonatology, for example?

7 A. Not at all.

8 Q. Okay. And so in this particular case
9 you've not been retained as an expert by anyone,
10 have you?

11 A. No.

12 Q. To your knowledge, you haven't been
13 asked to act as an expert by anybody, have you?

14 A. No.

15 Q. And you've not been paid any
16 compensation for your testimony today?

17 A. No.

18 Q. And nobody's offered you any
19 compensation for your testimony today?

20 A. No.

21 Q. Okay. And you do not intend to testify
22 in this case as an expert, is that right?

23 A. Correct.

24 Q. All right, tell me a little bit about
25 your background.

1 MS. ESFANDIARIFARD: Object to form.
2 BY MR. ROJAS:

3 Q. Can you just try to take me through
4 your education, if you would?

5 A. So I have a master's in social work and
6 a Ph.D. in social policy, and I have sort of
7 formal-ish training in childbirth education, and my
8 background in milk banking is largely self taught.
9 I read a lot and go to conferences and go to talks.
10 I talk to people, but I'm not -- that's my
11 educational background.

12 Q. Got it. Tell me, how did you get
13 involved -- what led you to get involved in donor
14 milk banking?

15 A. Two of my four children and my two
16 youngest children were both born into NICUs when
17 they were born. And when my youngest was born --
18 well, he was born into NICU, I learned about milk
19 banking through an incident that actually happened
20 after my youngest was born, but I hadn't been aware
21 that there was such a thing as milk banking.

22 And once I learned about it and
23 discovered that there wasn't one in our area, and I
24 obviously had my own -- I mean, when my children
25 were born I had enough milk for them, so I didn't

1 have to use donor milk, but in one situation my
2 milk was given to another baby.

3 This was not in this country, it was a
4 long time ago, but my milk was given to another
5 baby, and all of that made me aware of the
6 possibility of donating milk to others.

7 And then when I learned about milk
8 banks and I discovered that there wasn't one in our
9 area, I kind of said, hum, seems like something we
10 could use here, and got together with some
11 colleagues and started up a milk bank.

12 Q. Are you comfortable sharing a little
13 more about the circumstances? Were you in a NICU
14 when you ended up donating your milk?

15 MS. ESFANDIARIFARD: Form.

16 A. Yeah, so that was when my -- my third
17 was born. We were living overseas, he was in the
18 NICU. There was another baby in the NICU who
19 for -- his mother was not making enough milk, and
20 for whatever medical reason the doctor was aware
21 that what the baby really needed was human milk --
22 the medical issue I'm not aware of, it was really
23 none of my business.

24 But whatever it was, I was the only mom
25 in the NICU who had enough milk to give to someone

1 else. And so they took my milk, they cultured it,
2 they did not pasteurize it -- again, this was a
3 long time ago, and it wasn't here -- but they did
4 culture the milk, and gave that, some of my extra
5 milk, to that baby, who did pretty well.

6 BY MR. ROJAS:

7 Q. When you say cultured the milk, can you
8 just explain what that means?

9 A. They took -- I wasn't there when they
10 did it, and at that time I surely didn't know what
11 it was about. But you take a sample of the milk,
12 and you run cultures on it, and it picks up whether
13 there are pathogens to the milk that you wouldn't
14 want to pass on to the baby.

15 It's the same thing -- I don't know
16 whether it's exactly the same test, but that's what
17 we do with the milk also. After it's been
18 pasteurized we culture and send out samples to
19 culture to make sure there are not pathogens in the
20 milk.

21 MS. ESFANDIARIFARD: Objection to form
22 and foundation for when you say cultured the milk,
23 can you explain what that means?

24 MR. ROJAS: Noted.

25 BY MR. ROJAS:

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1 Q. So, and I'm not going to spend too much
2 time on this, but I just had a couple of follow-up
3 questions.

4 Were you yourself at that time
5 hospitalized in the hospital where the babies
6 were?

7 A. No. I was sent home after the first
8 couple of days after he was born, and I commuted --
9 I spent most of my time there, but I was at home.

10 Q. And how long after the birth was this,
11 more or less?

12 A. He was in -- my son was in the hospital
13 for three weeks, so it was probably, I don't know,
14 maybe a week and a half or two weeks after he was
15 born.

16 Q. And do you know the circumstances -- do
17 you remember how you were approached about it?
18 Was it a doctor that approached you?

19 A. I think it was one of the nurses who
20 approached me. I mean, I think I -- I may -- this
21 is really -- this is going back a few years. This
22 kid is now turning 35.

23 I think -- the doctor may have
24 approached me. The nurse may have -- it may have
25 been two of them. It may have been someone who

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1 knew that I had extra milk, and then the doctor
2 approached me about giving some of my milk to the
3 baby. Or maybe the nurse, or some combination. I
4 don't remember the details.

5 Q. I know it was a NICU, but do you know
6 if the baby that received your milk was a low
7 birthweight infant?

8 A. Yeah, it was.

9 Q. And do you know how the baby -- do you
10 keep in touch at all? Do you know how the baby
11 turned out?

12 MS. ESFANDIARIFARD: Object to form.

13 A. I do not. I did not keep in touch.
14 The baby did okay in the NICU, but, again, that was
15 a long time ago. I did not keep in touch.

16 BY MR. ROJAS:

17 Q. Got it, okay. So the baby, to your
18 knowledge, left the NICU in good condition?

19 A. Yup.

20 Q. Okay. All right, we have in this case,
21 I'll represent to you, there's a woman who was in
22 the NICU with the mother of the baby in this case
23 who offered her donor milk -- or offered her milk,
24 I should say, to donate to RaiLee.

25 As you sit here, do you know any

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1 additional facts about that, or did you know that?

2 A. No.

3 MS. ESFANDIARIFARD: Object to form.
4 BY MR. ROJAS:

5 Q. Now, I'll represent to you that she was
6 a smoker, and she -- but that she had actually
7 been a patient in the hospital and had received
8 blood work, and she testified that she had been
9 tested. Her milk had been fed to her baby.

10 Under these circumstances, do you have
11 any concern with the baby receiving that milk, if
12 the mother is apprised of the risks and agrees to
13 it?

14 MS. ESFANDIARIFARD: Object to form,
15 and calls for expert testimony.

16 A. I feel like I would have to know a
17 little more about what was going on. A lot of this
18 relates to gestational age and other circumstances
19 of the baby, and that's why we normally screen our
20 moms pretty carefully.

21 BY MR. ROJAS:

22 Q. You told us a little bit about the
23 screening that you do in your milk bank, and help
24 me understand, if a mother were to contact you
25 directly and told you that she wants donor milk

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1 for her baby who was in a NICU, what would be the
2 process to make that happen, if you could?

3 MS. ESFANDIARIFARD: Object to form.

4 A. So a NICU mom would call us and say we
5 want milk for our baby in the NICU. And the first
6 question you would say is is the hospital using
7 donor milk, and talk to them.

8 BY MR. ROJAS:

9 Q. Okay.

10 A. Because sometimes it arises that the
11 baby no longer qualifies for donor milk, but the
12 hospital does use donor milk.

13 Q. And let's say the hospital did not have
14 a donor milk program. How would you have handled
15 this mother making this request?

16 MS. ESFANDIARIFARD: Object to form.

17 A. So on rare occasions we would work with
18 the mom, or the parents and the hospital, to see if
19 donor milk could be -- if we could send the donor
20 milk to the hospital, even to -- I mean, to the
21 hospital in the baby's name or to the home and
22 mother brings it, whatever the details, even if the
23 hospital is not using donor milk.

24 They would have to obviously -- the
25 hospital had to approve it. They would have to say

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1 yes. It comes in a distinctive bottle. Mom just
2 couldn't bring it in and say, oh, this is my milk.
3 It's got labels on it, et cetera, et cetera.

4 But on rare occasions we work with both
5 the hospital and the family to see if we could get
6 milk to the baby --

7 BY MR. ROJAS:

8 Q. And to -- sorry, I did not mean to
9 interrupt. Were you done?

10 A. So that we could see if we could get
11 milk to the baby even if the hospital did not have
12 an account or the baby -- yeah, if the hospital did
13 not have an account and wasn't working with us.

14 Q. Okay. Was there ever an occasion --
15 could the parent pay for the donor milk?

16 A. Right. They would pay for it out of
17 pocket.

18 Q. To your knowledge, did you ever have a
19 hospital that said, no, we're not going to allow
20 it, in those rare occasions?

21 MS. ESFANDIARIFARD: Object to form.

22 A. I don't think -- again, it came up very
23 rarely, and we would work carefully with everybody.
24 I don't remember a situation where the hospital
25 would say no. They might limit it, they might say

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1 for a limited time or something, but I don't
2 remember a hospital ever saying we absolutely won't
3 do this.

4 BY MR. ROJAS:

5 Q. Okay. Your donor milk bank program,
6 you founded it, the Northeast Milk Bank, right?

7 A. Yes.

8 Q. And you were asked a number of
9 questions about whether you serviced West
10 Virginia. Is there any geographical constraint to
11 the fact that you were called the Northeast donor
12 milk bank? In other words, would there be any
13 problem with you serving a hospital out of the
14 Northeast?

15 MS. ESFANDIARIFARD: Objection.

16 A. Not at all. Not at all. We serve --
17 we all serve hospitals across -- across regions.

18 BY MR. ROJAS:

19 Q. Elaborate on that, if you will, how you
20 work with each other to serve hospitals across the
21 country?

22 MS. ESFANDIARIFARD: Object to form.

23 A. So there are multiple ways that that
24 might happen. There's no -- you know, there's no
25 restrictions -- HMBANA has no restrictions, the

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1 government has no restrictions, you can send things
2 across state lines, et cetera, et cetera.

3 It depends on who calls us and wants to
4 set up an account. There are circumstances under
5 which hospitals -- and I don't know how many, I do
6 know that it is multiple hospitals -- that, in
7 fact, have accounts with multiple milk banks.

8 Should there be a shortage in one
9 hospital or they can't get exactly what they need
10 from one hospital in order to cover their bases,
11 and make sure they have the supply they need, they
12 will establish accounts with more than one milk
13 bank, and we all know that.

14 Does that answer the question?

15 BY MR. ROJAS:

16 Q. I think it does. So was there ever a
17 time that the Northeast Milk Bank delivered milk
18 outside of the Northeast?

19 A. Oh, often, yes.

20 MS. ESFANDIARIFARD: Objection, form,
21 foundation.

22 BY MR. ROJAS:

23 Q. And can you give me just a little more
24 detail on that?

25 A. So we've sent milk -- we have hospitals

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1 in New York -- well, New York, I guess, is the
2 Northeast. It's not New England, but it's the
3 Northeast.

4 There's -- there's no milk bank -- just
5 as an example, there's no milk bank in Georgia, and
6 so, you know, when it's -- when it's been
7 requested, we have sent milk to, on occasion,
8 hospitals in Georgia. There are probably closer
9 milk banks that do that now, this is at the time.

10 We have sent -- we still send milk --
11 to my knowledge, I don't have access to the
12 records, but to hospitals, for example, in
13 Washington DC, there is no milk bank in Washington
14 DC, so we established accounts with them, and so we
15 continue to work with them.

16 On occasion we send milk -- when a milk
17 bank is low on milk, and that could be for any one
18 of a number of reasons, there are a lot of reasons
19 why a milk bank could be low on milk temporarily,
20 we sometimes send milk -- we work with them and
21 send milk to the hospitals that they need, and the
22 clients they need while they're resolving whatever
23 the issue was.

24 Q. Okay. And I did hear you testify that,
25 in fact, in 2013, 2014 Pittsburgh did not have a

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1 donor milk bank yet. Did I hear that correctly?

2 A. Correct. Correct.

3 Q. And I think you mentioned the Ohio milk
4 bank?

5 A. Correct.

6 Q. That was available in West Virginia?
7 That was the closest one you know of to West
8 Virginia?

9 A. That was in existence then. Correct.

10 MS. ESFANDIARIFARD: Object to form.
11 BY MR. ROJAS:

12 Q. And were there occasions that if you
13 got a call from either a doctor or parent about
14 donor milk, were you open about collaborating with
15 the existence of other donor milk bank programs?

16 MS. ESFANDIARIFARD: Object to form.

17 A. Oh, yes.

18 BY MR. ROJAS:

19 Q. You didn't try to -- you're a
20 not-for-profit business, right?

21 A. Correct.

22 Q. In other words, you wouldn't try to
23 keep it to yourself, if you will, right?

24 MS. ESFANDIARIFARD: Object to form.

25 BY MR. ROJAS:

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1 Q. Necessarily?

2 A. I mean, not -- I mean, if we've already
3 established an account with a hospital, we would
4 most often hold onto that account.

5 On the other hand, sometimes they
6 would -- it's really the hospital's decision. And
7 sometimes they would choose - you know, so we had
8 several hospitals in Pittsburgh, for example, that
9 we were serving.

10 And when the Pittsburgh milk bank
11 opened, over time most of those accounts moved over
12 to the Pittsburgh milk bank, but that was their
13 call --

14 Q. Got it.

15 A. -- to make, not ours.

16 Q. So some moved over, some did not?

17 MS. ESFANDIARIFARD: Object to form.

18 A. Yeah, I don't know -- I don't know what
19 the status is of all the milk banks in Pittsburgh,
20 but, yes, some of them did, the New York Hospital,
21 some of them did and some of them didn't, and as I
22 said, sometimes they would set up accounts with
23 multiple milk banks.

24 BY MR. ROJAS:

25 Q. Got it. And we talked about Ohio milk

Page 120

1 bank. Where specifically is that located, if you
2 know?

3 A. That was in Columbus.

4 Q. Columbus, Ohio. And are you familiar
5 with a milk bank in Indianapolis?

6 A. Yes.

7 Q. Was that available in 2013?

8 A. Yes. That's a good point, I forgot
9 about them. Yeah.

10 Q. Okay. And obviously your facility is
11 in Newton, Massachusetts, right?

12 A. Correct.

13 Q. And do you know if there was a milk
14 bank in North Texas?

15 A. Yes.

16 Q. Okay.

17 A. Yes.

18 Q. So and they were providing milk to
19 hospitals in 2013, to your knowledge?

20 A. Yes.

21 MS. ESFANDIARIFARD: Object to the form
22 and foundation.

23 BY MR. ROJAS:

24 Q. Now, towards the end of 2013, what
25 we're talking about here, the baby in this case

Page 121

1 was 28 weeks at birth and 1,370 grams. You were
2 asked a series of questions about whether there
3 would be enough donor milk to satisfy the needs
4 of -- of all babies. Do you remember that?

5 A. Yes.

6 Q. Okay. And I think you've fairly
7 answered that you did not think so. But I have a
8 little bit more specific question.

9 Do you think that there was enough
10 donor milk in 2013 to supply the needs of
11 premature infants under 1,500 grams?

12 MS. ESFANDIARIFARD: Object to form and
13 foundation, and calls for expert testimony.

14 A. That's a good question, I don't know
15 for sure. Likely there was, but I couldn't swear
16 to that, because I don't have a sense of the kind
17 of the needs of preterm babies and who uses milk
18 and under what circumstances, and which babies they
19 give them to. I'm not privy to that information.

20 BY MR. ROJAS:

21 Q. That's fair. Let me ask you questions
22 that are more within what you actually know. Was
23 there ever a time you can recall that you were
24 contacted by a hospital or a parent requesting
25 donor milk for a baby that was under 1,500 grams

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1 where you had to say, sorry, we don't have it?
2 MS. ESFANDIARIFARD: Object to form.

3 A. So the short answer is no. Because of
4 our -- our triage, or our prioritization, they get
5 the milk first.

6 BY MR. ROJAS:

7 Q. And explain that prioritization?

8 A. Part of our guidelines is HMBANA has a
9 prioritization list of who gets milk first,
10 which -- and NICU babies are the top of that list.
11 They get the milk first.

12 In terms of the birth weight of the
13 baby, or the weight of the baby, once we send the
14 milk to the NICU, it's their decision who actually
15 gets it and for how long. That's not our call to
16 make. They have their protocols and their
17 prioritizations.

18 But when we send -- so when we send
19 milk to a NICU, they are giving it to whichever
20 babies they give it to, but we have never said to a
21 NICU we can't send you the milk that you need. We
22 find ways to solve the problem.

23 Either call another milk bank, or on
24 occasion sometimes hospitals for their own
25 administrative and logistical reasons will order

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1 several weeks' worth of milk that they think
2 they're going to need at one time.

3 And in a situation where there's a
4 shortage, we would ask them if they could -- if we
5 can send them a week and a half's worth of milk
6 this week, and by next week we'll send them the
7 rest.

8 So it gives them the buffer that they
9 need, and we can serve the hospitals that we need
10 to serve who also need the milk. So that's our
11 mission, is to get milk to these, so we kind of
12 work a lot of different -- in a lot of different
13 ways.

14 Q. And through your overall network, I
15 don't want to mischaracterize what you said, but I
16 want to make sure I've summarized it correctly.

17 Through your overall network, you're
18 not aware of a problem getting a baby under 1,500
19 grams donor milk, if requested by a hospital?

20 A. Correct.

21 MS. ESFANDIARIFARD: Object to form and
22 foundation and mischaracterizes testimony.

23 BY MR. ROJAS:

24 Q. That is a correct characterization --

25 A. Yes.

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1 Q. -- that I just made?

2 A. Yes.

3 MS. ESFANDIARIFARD: Same objection to
4 form and foundation.

5 BY MR. ROJAS:

6 Q. And that was true in 2013?

7 MS. ESFANDIARIFARD: Same objection.

8 A. Yes.

9 BY MR. ROJAS:

10 Q. All right. Did your donor milk bank --
11 well, in general, has it been your experience that
12 as the demand for donor milk increased, that the
13 supply increased to meet that demand?

14 MS. ESFANDIARIFARD: Object to form and
15 calls for expert testimony.

16 A. I think certainly in our milk bank the
17 supply -- the supply also has been increasing over
18 the years, as people learn about milk banking and
19 want to participate and want to donate.

20 BY MR. ROJAS:

21 Q. You kind of anticipated my next -- I'm
22 sorry, were you done?

23 A. Yeah. I mean, that doesn't mean,
24 again, that there aren't momentary shortages, but
25 overall the supply is increasing to demand.

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1 Q. And my next question, which I think you
2 kind of anticipated, I was going to see if you
3 could elaborate a little further is, what other
4 dynamics do you think have affected the
5 availability in a positive way of donor milk?

6 MS. ESFANDIARIFARD: Object to form and
7 foundation.

8 A. Can you just repeat the question?

9 BY MR. ROJAS:

10 Q. Yes. What dynamics, in your
11 experience, have led to the growing availability
12 of donor milk?

13 MS. ESFANDIARIFARD: Same objection.

14 A. I think there are multiple factors. I
15 think the most important of them is probably that
16 more people know about donating milk, and so
17 they're doing it -- we're getting more donors.

18 Whether -- you know, in what ways the
19 demand is increasing is kind of a more complicated
20 question. Part of the objective is to, as we
21 said -- you know, if we're using donor milk as
22 bridge milk, part of the objective is to help moms
23 breastfeed their own babies so that there's less
24 demand.

25 BY MR. ROJAS:

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1 Q. Got it. When you were at Northeast
2 donor milk bank, did you -- actually, strike that.

3 Give me a moment, I'm sorry. Just
4 checking my notes here.

5 Do you know more or less in 2013 what
6 the cost would have been to feed a baby that's
7 around 1,370 grams on a daily basis?

8 MS. ESFANDIARIFARD: Object to form and
9 foundation.

10 A. So the milk fees that we charged at
11 that time were \$4 an ounce. For a tiny baby, an
12 ounce is three feeds. How many times a day the
13 babies are fed, I don't have information on that.
14 From there you can do some -- an estimate of the
15 math.

16 BY MR. ROJAS:

17 Q. Got it. So just make sure I got it
18 right, it was about \$4 -- and this was true in
19 2013?

20 A. Correct.

21 Q. Okay. And \$4 -- it was \$4 an ounce,
22 and that -- and you're saying an ounce equals
23 roughly three feeds for a baby of this size?

24 A. Correct.

25 Q. All right. Do you know -- and I'm

Page 127

1 sorry to be jumping around here a little bit. Do
2 you know in 2014 how many donor milk banks existed
3 towards the end of 2013?

4 MS. ESFANDIARIFARD: Object to form,
5 foundation, and calls for expert testimony.

6 A. I don't know the exact number. We --
7 we came online in 2011, and we were the tenth milk
8 bank. So there may have been 12 or 13 by that
9 time. I'd have to look it up, I don't know the
10 exact number.

11 MR. ROJAS: All right, I'm going to
12 take a little brief break, and I'm probably
13 nearing the end. I may have some additional
14 questions, but hopefully we'll be able to wrap up
15 within the next ten, 15 minutes.

16 MS. ESFANDIARIFARD: How long a break
17 did you want to take, Mr. Rojas?

18 MR. ROJAS: Probably just five, ten
19 minutes.

20 MS. ESFANDIARIFARD: Thanks very much.
21 Let's go off the record.

22 (Recess taken.)

23 MR. ROJAS: All right, I think I
24 probably have five to ten more minutes, but I do
25 have a couple of more questions.

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1 MS. ESFANDIARIFARD: Back on the
2 record.

3 MR. ROJAS: What was that?

4 MS. ESFANDIARIFARD: I was just making
5 sure -- yeah, okay. Sorry.

6 BY MR. ROJAS:

7 Q. You answered some questions about the
8 timing of -- from the time you got a request to
9 the timing -- to the time that the product could
10 be delivered, or the donor milk could be
11 delivered.

12 If Doctor Maxwell, he's the doctor in
13 this case, had called you and said, look, I
14 urgently need donor milk for a baby I have in the
15 NICU, and can you get it to me tomorrow, explain
16 to me what you would have done to accomplish that,
17 and whether it was something that is possible.

18 MS. ESFANDIARIFARD: Object to form,
19 foundation, calls for hypothetical.

20 A. So what we could do, and what we did do
21 in some situations like that that arose, where
22 someone said we really need this milk tomorrow, and
23 it's too far to send a courier, it's even too
24 far -- yeah, it would have to go by -- by FedEx.

25 What we did do under those

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1 circumstances when they arose was -- and certainly
2 at that time we did, we could pack up the milk, and
3 usually we had a -- not a courier, but we had a
4 FedEx person come and pick up the milk where we
5 were, and we were kind of beholden to the time
6 whenever they would come to pick it up.

7 What we did do on occasion in
8 situations like this, we would pack it up and
9 actually drive it over to a FedEx facility, FedEx
10 station, whatever they're called, and if it got
11 there by eight o'clock in the evening they could
12 get it overnight to wherever it needed to get to.
13 So we certainly did that on occasion.

14 BY MR. ROJAS:

15 Q. What was the longest sort of courier
16 distance you would do? Was that more for very
17 local stuff?

18 A. So it was mostly local. We did have an
19 occasion -- yeah, that was mostly local, in the
20 Boston area hospitals.

21 We did have an occasion where we
22 would -- where we couriered milk to a hospital, I
23 think, in New York -- I'm trying to remember if it
24 was New York or Connecticut -- because they really
25 needed it, and we did -- you know, full disclosure,

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1 let them know that this was not going to be a cheap
2 proposition, but they were covering the
3 transportation.

4 So we couriered it I think as far as
5 New York, it might have been Connecticut or
6 New York, on a couple of occasions. But that's
7 pretty unusual.

8 Q. Okay. And if for some reason you
9 received this phone call and you didn't think you
10 were going to be able to get it to the hospital by
11 the next day, could you have contacted one of the
12 other donor milk banks that were closer?

13 A. Yeah.

14 MS. ESFANDIARIFARD: Object to form and
15 foundation.

16 A. Yeah.

17 BY MR. ROJAS:

18 Q. And is that something that you had
19 done?

20 MS. ESFANDIARIFARD: Object to form.

21 A. I'm trying to remember if we needed to
22 do that at any time. Certainly in those years, and
23 I'm not remembering a specific situation, but it's
24 entirely possible we might say, you know what,
25 contact Ohio, they can get it to you quicker, or

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1 whatever.

2 BY MR. ROJAS:

3 Q. So as you sit here today, one way or
4 another, if a doctor called you, do you have any
5 doubt that you would have been able to get donor
6 milk to a hospital in West Virginia, whether it
7 was you yourself or through one of your partner's
8 donor milk banks, by the next day?

9 MS. ESFANDIARIFARD: Object to form.

10 A. I mean, there's a circumstance under
11 which we wouldn't be able to, if it came in too
12 late, FedEx was closed. There are circumstances --
13 are there any circumstances where it wouldn't have
14 gotten there by the next day? Yeah. But we did
15 work hard to make sure that hospitals got what they
16 needed when they needed it, and they didn't call us
17 quite so late in the game.

18 BY MR. ROJAS:

19 Q. Right. So in this particular case the
20 mother had not yet run out of her own breast milk.
21 Do you have any doubt you could have gotten it to
22 them within 24 hours?

23 MS. ESFANDIARIFARD: Object to form,
24 foundation, characterization of the facts.

25 A. Could we have gotten it to them within

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1 24 hours -- one way or the other we could have
2 gotten it to them. Unless you're talking a
3 weekend, but, yes.

4 BY MR. ROJAS:

5 Q. Okay. Explain to me a little bit more
6 about the process when a hospital called you up
7 and said, look, we want to establish a donor milk
8 bank program. Take me through the steps.

9 A. So usually there was contact before
10 they called us and said we want to set up a
11 program. It started with someone, you know, a
12 nurse or lactation consultant saying we would love
13 to start a program, but we don't know how to do
14 this and who to talk to, et cetera, so we would
15 work with them.

16 Once -- I mean, I can skip over that
17 part to someone calling and says, yes, we're ready
18 to set up an account. Is that what you're asking?

19 Q. Yes. If someone like Doctor Maxwell
20 called you and said, I'd like to set up an
21 account, you know, as quickly as possible, what
22 would be the process?

23 A. So what we would need would be some
24 kind of a PO system. Who do we bill, how do we --
25 you know, how do we -- to go through the -- you

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1 know, how the hospital gets bills for this.

2 And then we would also get the
3 information very specifically that where the milk
4 needs to go, right? The FedEx guy brings it,
5 they're not going to drop it off at the front door,
6 it has to go to the NICU on the X floor in Y unit
7 of the hospital so the milk gets where it's going
8 and doesn't, you know, sit on a loading dock, which
9 unfortunately sometimes happens.

10 So we would get very specific
11 information about where to send the milk. We would
12 work with the hospital, the NICU, whoever in the
13 NICU staff they wanted us to work with to get them
14 information.

15 They got us the information about where
16 to deliver it, we would get them the information
17 about what they needed in order to keep the milk
18 safe, you know, the freezer and information about
19 thawing, thawing the milk for the baby, all of that
20 information we would exchange -- we would send
21 them, and they would get us the information. And
22 then we could send them the milk.

23 Sometimes -- usually there was a way to
24 send -- to start the program before there was a
25 formal contract sent. There were mechanisms in the

1 hospital for, you know, emergency situations, and
2 we would get them the milk, and then we would worry
3 about the contract. Because if you wait for a
4 contract, that baby is going to be in kindergarten.

5 So we would work on the contract later
6 as long as we had sign-off that this was going to
7 happen, that this was doable, and that, if we
8 needed to, we could turn around pretty quickly.

9 Q. By the way, towards the end of 2013, do
10 you have a sense of which hospitals you were
11 servicing in the Boston area? Do you remember?

12 A. 2013. Probably we certainly -- I mean,
13 you want the names of the hospitals?

14 Q. Yes. If you remember.

15 A. We certainly -- you know, Brigham and
16 Women's and Mass. General. I don't remember
17 when -- I remember ones who came on particularly
18 late, but 2013. Boston Medical Center.

19 Q. Are those all level 4 NICUs?

20 A. I don't know which ones of those are
21 level 3s and which ones are level 4s.

22 Q. Are those generally the top NICUs in
23 the Boston area?

24 A. Yes.

25 Q. Are there others that --

1 MS. ESFANDIARIFARD: Object to form.

2 A. Yes. Beth Israel was one of them, but
3 we were not servicing Beth Israel yet. And
4 Children's. We were servicing Children's. I'm not
5 saying that right.

6 MR. ROJAS: All right, I think that
7 covers it, and thank you very much.

8 MS. ESFANDIARIFARD: I just have a
9 couple, it won't be long. Thank you, Mr. Rojas.
10 Thank you for your patience, Doctor Bar-Yam, I
11 don't think I have much. Just give me one second.

12 EXAMINATION

13 BY MS. ESFANDIARIFARD:

14 Q. Okay, you talked earlier this -- today,
15 I don't know what time zone to use -- with
16 Mr. Rojas about other milk banks being around that
17 you could reach out to in the case of a shortage,
18 or vice versa. Do you recall that conversation?

19 A. Yes, I do.

20 Q. You referred to those banks,
21 Doctor Bar-Yam, as your, quote, network at one
22 point. Do you recall that?

23 A. Yes.

24 Q. Okay. To be clear for the record, you
25 didn't work at those other milk banks, you worked

1 for Northeast Milk Bank, true?

2 A. Correct. Each milk bank is its on --
3 is its own entity, but we would collaborate and
4 work together.

5 Q. Understood. And you don't know -- you
6 have no idea whether those banks had contacts or
7 relationships with CAMC Hospital in West Virginia,
8 right?

9 A. I have no idea.

10 Q. No idea. And you have no idea whether
11 those banks in the network, as you referred to it,
12 ever sent donor milk to a recipient in West
13 Virginia, right? You don't know that?

14 A. I don't know that. I have no idea.

15 Q. And I think you answered this, but I
16 just want to make sure I understood it clearly.
17 Mr. Rojas asked you if you communicated with him
18 today, do you remember that?

19 A. Yes.

20 Q. Just so we're all clear, have you
21 communicated with any of plaintiff's counsel
22 today?

23 A. No.

24 Q. And you mentioned that you're not being
25 paid, I believe, for your time on this deposition.

1 Have you been offered any compensation by
2 plaintiff or plaintiff's counsel in any capacity,
3 including to appear at trial?

4 A. No.

5 MS. ESFANDIARIFARD: That's all I have.
6 Again I would say on behalf of both of us, thank
7 you so much for your time, Doctor.

8 MR. ROJAS: Thank you, Doctor.

9 THE WITNESS: Okay. So we're all set?

10 MR. ROJAS: All set.

11 (The deposition was concluded at 1:50 p.m.)
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SIGNATURE: _____ DATE: _____

DATE:

Pamela J. Carle, LCR, RPR, CRR

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